DRAFTING OF SHOW CAUSE NOTICE UNDER GST

Compendium of 36 Practical e-Exercises (Nos. 52 to 87)

Contravention • Consequences • Charged Persons • Charging Paragraph • Evidence

OCTOBER 26, 2026

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Drafting of Show Cause Notice under GST

Compendium of 36 e-Exercises (Nos. 52 to 87)

Before doing these class exercises, the learner may carefully go through the contents of the note given below.

Note for the reader:

- These exercises on drafting of Show Cause Notice have been developed for the purpose of teaching departmental officers so as to explain the basics of drafting of Show Cause Notice.
- These exercises are based on **4C-1E approach**. 4Cs include contraventions, consequences, charging paragraph(s), and charged person. E stands for evidence(s).
- These exercises can be used by the reader to self-read, and learn the requisite skills required for drafting of SCN. Understanding these exercises will also enable taxpayers to fully understand the consequences of non-compliance of GST law.
- The draft SCNs included in these exercises are a simplified version. It must be kept in mind that Show Cause Notices issued in the field are much more detailed ones.
- In these exercises, attempts have been made to explain **four 'C's - Contraventions, Consequences, Charged persons and Charging paragraph**. The proper understanding of the four "C"s is a must for officers to draft good quality SCN.
- The critical aspect of any SCN is the evidence collected during investigation based on which the allegation of contravention has been made in the SCN. Therefore, one must remember that necessary evidences supporting the allegations must be included and discussed in the body of the SCN.
- After reading the situation given, the trainee officer may identify the legal provisions which have been contravened; consequences of such contravention of each of the legal provisions; person(s) to be charged in the SCN; and finally, draft the Charging Paragraph of the SCN.
- After completion of each exercise, the trainee officer may compare his/her answer with the model answer given at the end of that exercise.

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Exercise 52

Supply of goods at a trade exhibition in another State by a casual taxable person without obtaining registration - Section 24(ii), Section 25(1) proviso and Section 27

Exercise 52: Supply of goods at a trade exhibition in another State by a casual taxable person without obtaining registration - Section 24(ii), Section 25(1) proviso and Section 27

Situation in Brief:

1. The Pune Chamber of Trade and Crafts organised the 'Pune Furniture and Home Decor Expo 2025' at the Exhibition Ground, Balewadi, Pune, Maharashtra, from 05.12.2025 to 14.12.2025. The exhibitor list furnished by the organiser on 16.12.2025 shows that 112 exhibitors took stalls, of whom nine gave their GSTIN as 'not applicable'. Stall No. B-47 was allotted to M/s XXX, proprietor Mr. Z, of YYYY, Jaipur, Rajasthan. In the stall booking form signed on 20.11.2025, Mr. Z declared 'GSTIN: not required - turnover below limit' and paid stall rent of Rs.85,000/-. Visitors' complaints to the Chamber mentioned that the stall sold 'only without bill' at a lower price.

2. Verification on the GST common portal on 18.12.2025 showed that there is no registration (regular, casual or any other) against the PAN of Mr. Z, either in Maharashtra or in Rajasthan. A summons dated 19.12.2025 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared on 29.12.2025 and produced (a) eight cash memo books with 612 cash memos (carrying his name and address but no GSTIN and no tax), (b) a pocket diary with day-wise sales at the Expo, (c) the statement of the UPI account of his wife, Mrs. Z, whose QR code was displayed at the stall, and (d) the stall rent receipt and the lorry receipts for the carriage of goods from Jaipur to Pune and of the unsold goods back to Jaipur.

3. The statement of Mr. Z was recorded on 29.12.2025 under Section 70 of the CGST Act, 2017, wherein he stated that he manufactures and sells wooden furniture and decor items (HSN 9403, taxable at 18%) from his workshop in Jaipur, with a turnover of about Rs.31 lakh in FY 2024-25, and is not registered anywhere as his turnover is below the threshold; that the Expo was the first occasion on which he sold goods outside Rajasthan; that on 28.11.2025 a fellow exhibitor had told him that a separate GST registration was required for selling at an exhibition in another State, but he decided not to apply because 'the fair is only for ten days and nobody checks'; that he quoted a 'without bill' price to customers and gave only handwritten cash memos without GST; that he had asked his wife to use her UPI QR code so that his own name would not appear in the bank records; that he did not collect any amount as tax; that the sales were made from the stall to customers in Pune; and that he carried the cash back to Jaipur at the end of the Expo.

4. Scrutiny of the cash memos, the diary and the UPI statement showed that they reconcile with each other and with the quantity of goods carried to and brought back from Pune. All the goods were taxable at 18% (9% central tax and 9% State tax), and no input tax credit is involved. The day-wise sales are as follows:

Date	Cash memos (Rs.)	UPI receipts (Rs.)	Total (Rs.)
05.12.2025	90,000	1,20,000	2,10,000
06.12.2025	1,10,000	1,60,000	2,70,000
07.12.2025	1,70,000	2,30,000	4,00,000
08.12.2025	1,20,000	1,50,000	2,70,000
09.12.2025	80,000	1,00,000	1,80,000
10.12.2025	90,000	1,30,000	2,20,000
11.12.2025	1,00,000	1,40,000	2,40,000
12.12.2025	1,50,000	2,10,000	3,60,000
13.12.2025	2,10,000	2,70,000	4,80,000
14.12.2025	2,60,000	3,50,000	6,10,000
TOTAL	**13,80,000**	**18,60,000**	**32,40,000**

5. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Pune CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Maharashtra Goods and Services Tax Act, 2017 [MGST Act] and the Rules made under the two Acts):

1. **Section 24(ii) read with Section 2(20) of the CGST Act, 2017** - failure to obtain registration. Mr. Z is a 'casual taxable person': he occasionally undertook transactions involving the supply of goods in the course of his business in Maharashtra, where he has no fixed place of business. Section 24 overrides the threshold in Section 22(1): a casual taxable person is liable to be registered irrespective of the value of his supplies, so neither the Rs.40 lakh threshold for suppliers of goods nor the turnover of Rs.31 lakh in Rajasthan is of any help to him.
2. **Second proviso to Section 25(1) of the CGST Act, 2017** - failure to apply for registration at least five days prior to the commencement of business, i.e. on or before 30.11.2025 for the Expo that began on 05.12.2025; and **Section 27(2)** - failure to make the advance deposit of tax equal to the estimated tax liability for the period for which registration was required.
3. **Section 9(1) of the CGST Act, 2017** (charging section) - non-payment of tax at 18% (9% CGST + 9% MGST) on the outward supplies of goods valued at Rs.32,40,000/- made from the stall in Pune.
4. **Section 31(1) of the CGST Act, 2017 read with Rule 46** - failure to issue tax invoices; handwritten cash memos without GSTIN and tax were issued.
5. **Sections 37(1) and 39(1) of the CGST Act, 2017** - failure to furnish the statement of outward supplies (FORM GSTR-1) and the return (FORM GSTR-3B) with payment of tax for the period of the Expo (December 2025).
6. **Section 35(1) of the CGST Act, 2017 read with Rule 56** - failure to maintain accounts of the stock of goods and of the supplies at the place of business (only a pocket diary was kept).

Note: *Section 76 (tax collected but not paid to Government) is not attracted because no amount was collected as tax; the customers paid only the 'without bill' price. Section 129 is not attracted because the goods were not detained in transit. The Noticee could not claim any input tax credit as he was not registered, and no ITC provision is invoked.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the MGST Act, 2017):

1. Registration - the proper officer has the power to register a person suo motu under **Section 25(8) of the CGST Act, 2017 read with Rule 16**. It is not proposed here, because the Expo was a one-off event which ended on 14.12.2025 and the registration of a casual taxable person remains valid only for the period specified in the application or ninety days, whichever is earlier [Section 27(1)]; it would serve no purpose. The Noticee is to be advised to apply at least five days before any future event in another State, with the advance deposit under Section 27(2). The non-registration does not reduce the tax liability, which arises from the date of each supply.
2. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017** (and the MGST Act). The supplies were made in December 2025, i.e. in FY 2025-26, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so a notice may be issued up to 30.06.2030 [Section 74A(2)]. The order must be passed within twelve months of the notice [Section 74A(7)], extendable by six months. The entire value of Rs.32,40,000/- is taxable - no part is exempt - as Section 22(1) is not available to a casual taxable person.
3. Interest - under **Section 50(1)** at 18% per annum on the tax, from 21.01.2026 (the day after the due

date of the return for December 2025) till payment. Illustratively, up to 30.11.2026 (314 days), interest is Rs.90,308/- (Rs.45,154/- each under the CGST and MGST Acts).

4. Penalty - under **Section 74A(5)(ii)**, a penalty equal to the tax due, Rs.5,83,200/- (Rs.2,91,600/- each under the CGST and MGST Acts). The default is by reason of suppression of facts to evade tax: the Noticee (a) was told on 28.11.2025 that registration was required and chose not to apply, (b) declared 'GSTIN not required' to the organiser, (c) quoted a 'without bill' price and issued cash memos without tax, (d) routed 57% of the receipts to the UPI account of his wife so that his own name would not appear, and (e) carried the cash back to Rajasthan. Each of these is a deliberate act, and not an error of law, as in Exercise-02. The concessions of **Section 74A(9)** (15% of the tax if paid before the notice, 25% within 60 days of the notice and 50% within 60 days of the order, with the tax and interest) are available to the Noticee.

5. Specific offence penalties - **Section 122(1)(xi)** (being liable to be registered, failure to obtain registration), **Section 122(1)(i)** (supply of goods without issue of invoice) and **Section 122(1)(xv)** (suppression of turnover) are also attracted. As a penalty is proposed under Section 74A(5)(ii), these are proposed in the alternative and without prejudice, subject to Section 75(13) (no double penalty for the same act) and Section 126.

6. Recovery - under Sections 78 and 79, if the confirmed amount is not paid in time. As the Noticee resides in Jaipur, recovery may require action through the Rajasthan jurisdictional officer under Section 79(1)(c)/(d) (attachment and sale, or recovery as arrears of land revenue) in coordination with that officer.

7. Alternative route (not adopted) - assessment of an unregistered person under Section 63 (FORM GST ASMT-14) is available where a person liable to register has not done so. Since the Noticee produced his records and the turnover is reconciled with the UPI statement, the regular demand route under Section 74A is preferred.

8. Prosecution - Section 132(1)(a) has been considered (supply of goods without invoice, with intent to evade tax). The tax involved (Rs.5,83,200/- including the State tax) is below the monetary limits of Section 132(1), so prosecution is not proposed.

Illustrative working of the tax proposed to be demanded (no threshold is available to a casual taxable person):

Particulars	Taxable value (Rs.)	CGST @9% (Rs.)	MGST @9% (Rs.)	Total tax (Rs.)	Penalty 74A(5)(ii) (Rs.)
Cash memo sales	13,80,000	1,24,200	1,24,200	2,48,400	2,48,400
UPI receipts	18,60,000	1,67,400	1,67,400	3,34,800	3,34,800
TOTAL	**32,40,000**	**2,91,600**	**2,91,600**	**5,83,200**	**5,83,200**

Basis: *Taxable value is taken as the value actually received, since no tax was charged separately; if the Noticee shows that his prices were tax-inclusive, the benefit of cum-tax valuation should be considered at the adjudication stage. The due date of the return for December 2025 is 20.01.2026 and interest runs from 21.01.2026.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Jaipur, Rajasthan, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Pune CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the goods of aggregate value of Rs.32,40,000/- supplied by them from Stall No. B-47 at the Pune Furniture and Home Decor Expo 2025 from 05.12.2025 to 14.12.2025 should not be held to be

taxable supplies made as a casual taxable person in contravention of Section 24(ii) and the first proviso to Section 25(1) of the CGST Act, 2017/MGST Act, 2017, without obtaining registration;

(ii) an amount of Rs.2,91,600/- (Central tax) and Rs.2,91,600/- (Maharashtra State tax), total Rs.5,83,200/- (Rupees Five Lakh Eighty-Three Thousand Two Hundred only), being tax not paid on the taxable value of Rs.32,40,000/-, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from 21.01.2026 till the date of payment;

(iv) a penalty of Rs.2,91,600/- (Central tax) and Rs.2,91,600/- (Maharashtra State tax), total Rs.5,83,200/-, being equal to the tax due, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/MGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on them under Section 122(1)(xi), Section 122(1)(i) and Section 122(1)(xv) of the CGST Act, 2017/MGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-PUNE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Pune CGST Commissionerate, Maharashtra

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Maharashtra Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX,
YYYY, Jaipur, Rajasthan.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS the Pune Chamber of Trade and Crafts organised the 'Pune Furniture and Home Decor Expo 2025' at the Exhibition Ground, Balewadi, Pune, from 05.12.2025 to 14.12.2025. The exhibitor list furnished by the organiser shows that Stall No. B-47 was allotted to M/s XXX, proprietor Mr. Z, of Jaipur, Rajasthan, who declared in the stall booking form dated 20.11.2025 'GSTIN: not required - turnover below limit' (RUD-1);

2. AND WHEREAS verification of the GST common portal on 18.12.2025 revealed that no registration existed against the PAN of Mr. Z in any State; a summons dated 19.12.2025 under Section 70 of the CGST Act, 2017 was therefore issued to him (RUD-2), in response to which he appeared on 29.12.2025 and produced eight cash memo books with 612 cash memos, a pocket diary of day-wise sales, the statement of the UPI account of Mrs. Z, the stall rent receipt and lorry receipts (RUD-4 to RUD-6);

3. AND WHEREAS the statement of Mr. Z was recorded on 29.12.2025 under Section 70 of the CGST Act, 2017 (RUD-3), wherein he, inter alia, admitted and stated that:

- he manufactures and sells wooden furniture and decor items (HSN 9403) from Jaipur and is not registered anywhere, and the Expo was the first occasion on which he sold goods outside Rajasthan;
- a fellow exhibitor had told him on 28.11.2025 that a separate registration was required to sell at an exhibition in another State, but he did not apply because 'the fair is only for ten days and nobody checks';
- he quoted a 'without bill' price, issued only handwritten cash memos without GSTIN and tax, and did not collect any tax separately;
- he asked his wife to use her UPI QR code so that his name would not appear in the bank records; and
- he carried the cash back to Jaipur at the end of the Expo;

4. AND WHEREAS scrutiny of the cash memos, the diary and the UPI statement revealed that they reconcile with each other and with the goods carried to and from Pune, and that the Noticee made taxable supplies of goods (HSN 9403, taxable at 18%) of Rs.32,40,000/- from the stall during 05.12.2025 to 14.12.2025, of which Rs.13,80,000/- was received in cash and Rs.18,60,000/- through UPI, as per the day-wise statement at Annexure-A;

5. AND WHEREAS it appears that the Noticee, who occasionally undertook the supply of goods in Maharashtra, where he has no fixed place of business, is a casual taxable person who was liable to be registered under Section 24(ii) of the Act irrespective of the value of his supplies, and was required to apply for registration at least five days before the commencement of business [first proviso to Section 25(1)] and to make an advance deposit of tax under Section 27(2), but failed to do so; and that he supplied goods without issuing tax invoices, without payment of tax and without furnishing any return;

6. AND WHEREAS the tax payable at 18% (9% CGST + 9% MGST) on the taxable value of Rs.32,40,000/- is Rs.2,91,600/- each under the CGST Act and the MGST Act, total Rs.5,83,200/- (Annexure-A);

7. AND WHEREAS the Noticee was aware of the requirement of registration on 28.11.2025, declared 'GSTIN not required' to the organiser, quoted a 'without bill' price, issued cash memos without tax, routed 57% of the receipts through the UPI account of his wife and took the cash back to Rajasthan. The non-payment of tax therefore appears to be by reason of suppression of facts with intent to evade tax, attracting penalty under Section 74A(5)(ii) of the CGST Act, 2017/MGST Act, 2017;

8. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the MGST Act, 2017):

- Section 24(ii) read with Section 2(20) - failure to obtain registration as a casual taxable person;
- Second proviso to Section 25(1) and Section 27(2) - failure to apply for registration five days before commencement of business and to make the advance deposit;
- Section 9(1) - non-payment of tax due on outward supplies of goods;
- Section 31(1) read with Rule 46 - failure to issue tax invoices;
- Sections 37(1) and 39(1) - failure to furnish FORM GSTR-1 and FORM GSTR-3B and to pay the tax;
- Section 35(1) read with Rule 56 - failure to maintain the prescribed accounts;

9. AND WHEREAS the aforesaid acts and omissions of the Noticee render him liable to:

(a) demand and recovery of tax under Section 74A of the CGST Act, 2017/MGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/MGST Act, 2017;

(c) penalty under Section 74A(5)(ii) of the CGST Act, 2017/MGST Act, 2017; and

(d) penalty under Sections 122(1)(xi), 122(1)(i) and 122(1)(xv) of the CGST Act, 2017/MGST Act, 2017 (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c) above);

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Jaipur, Rajasthan, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Pune CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the goods of aggregate value of Rs.32,40,000/- supplied by them from Stall No. B-47 at the Pune Furniture and Home Decor Expo 2025 from 05.12.2025 to 14.12.2025 should not be held to be taxable supplies made as a casual taxable person in contravention of Section 24(ii) and the first proviso to Section 25(1) of the CGST Act, 2017/MGST Act, 2017, without obtaining registration;

(ii) an amount of Rs.2,91,600/- (Central tax) and Rs.2,91,600/- (Maharashtra State tax), total Rs.5,83,200/- (Rupees Five Lakh Eighty-Three Thousand Two Hundred only), being tax not paid on the taxable value of Rs.32,40,000/- as detailed in Annexure-A to this notice, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from 21.01.2026 till the date of payment;

(iv) a penalty of Rs.2,91,600/- (Central tax) and Rs.2,91,600/- (Maharashtra State tax), total Rs.5,83,200/-, being equal to the tax due, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/MGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on them under Section 122(1)(xi), Section 122(1)(i) and Section 122(1)(xv) of the CGST Act, 2017/MGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/MGST Act, 2017, whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said notice are deemed to be concluded;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/MGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Exhibitor list and stall booking form dated 20.11.2025 of M/s XXX, furnished by the Pune Chamber of Trade and Crafts;

RUD-2: Summons dated 19.12.2025 issued under Section 70 of the CGST Act, 2017, with proof of service;

RUD-3: Statement of Mr. Z recorded under Section 70 of the CGST Act, 2017 on 29.12.2025;

RUD-4: Eight cash memo books (612 cash memos) and the pocket diary of day-wise sales produced by Mr. Z on 29.12.2025;

RUD-5: Statement of the UPI account of Mrs. Z for 05.12.2025 to 14.12.2025;

RUD-6: Stall rent receipt and lorry receipts for the carriage of goods from Jaipur to Pune and back;

Annexure-A: Day-wise statement of sales and tax calculation for 05.12.2025 to 14.12.2025 [as per the working in Part B and the table in the Situation].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Pune CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Pune, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Why a casual taxable person?*** *Mr. Z is unregistered in his home State, but that does not matter: Section 24(ii) requires every casual taxable person to register, without any threshold. The first step is always to ask whether the supplier has a fixed place of business in the State where the supplies are made. Compare Exercise-02 (a person with a fixed place of business, where the threshold of Section 22(1) applied and only turnover above it was taxed).*
- ***CGST/MGST or IGST?*** *The notice proceeds on the footing that the supplies were made from the stall in Pune and are intra-State. A supply by a person located in Rajasthan to a customer in Maharashtra can also be argued to be an inter-State supply (IGST). If the facts on the location of the supplier are doubtful, the notice may demand the IGST in the alternative; the amount of tax is the same (18%), and Section 77 of the CGST Act and Section 19 of the IGST Act would then govern any refund of tax paid under the wrong head.*
- ***Fraud or non-fraud?*** *In Exercise-02 the registration default was by ignorance (Section 74A(5)(i)). Here the evidence of knowledge and concealment (the 28.11.2025 conversation, the false declaration to the organiser, the use of the wife's UPI code, the 'without bill' price) justifies Section 74A(5)(ii). The charge must always be supported by the evidence discussed in the body of the notice; without it, only 74A(5)(i) can be proposed.*

- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh). Here the central tax demand is Rs.2,91,600/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 53

Supply of goods at an exhibition in India by a non-resident taxable person (foreign supplier) without obtaining registration - Section 24(v), Section 2(77), Section 25(1) proviso and Section 27

Exercise 53: Supply of goods at an exhibition in India by a non-resident taxable person (foreign supplier) without obtaining registration - Section 24(v), Section 2(77), Section 25(1) proviso and Section 27

Situation in Brief:

1. The Southern Engineering Manufacturers' Association (the organiser) held the 'Southern Industrial Machinery Expo 2026' at the Exhibition Grounds, Coimbatore, Tamil Nadu, from 12.02.2026 to 16.02.2026. The exhibitor list furnished by the organiser on 20.02.2026 shows that Hall B, Stall No. 214 was booked by M/s XXX GmbH, a company incorporated in Germany, having its registered office and its only factory at YYYY, Stuttgart, Germany (the 'Company'). The stall booking form dated 10.12.2025 gives the Company's German tax number and a contact address in Germany, but no Indian GSTIN or PAN; against 'GSTIN' it states 'not applicable - foreign exhibitor'. Mr. Z, the Managing Director of the Company, signed the form and paid the stall rent of Rs.6,20,000/- by international wire transfer.

2. Verification of the GST common portal on 21.02.2026 showed that no application in FORM GST REG-09 (registration of a non-resident taxable person) had been made by or for the Company, and that there is no registration of any kind against its name or its German tax number. The Company has no branch, office, employee, godown or bank account in India. The Immigration record shows that Mr. Z entered India on 10.02.2026 on a business visa and left on 18.02.2026.

3. Under a 'liaison and service agreement' dated 15.12.2025, the Company appointed M/s AAA Engineering Services, a proprietary concern of Mr. P, Coimbatore (the 'Liaison'), to (a) receive the Company's visitors at the stall, (b) receive in its own current account at Coimbatore the price paid by the Indian buyers, (c) arrange customs clearance, local transport and installation of the machines for the buyers, and (d) remit the balance price to the Company in Germany after retaining 3% of the price as service charges. The agreement states that the Liaison 'has no authority to negotiate or conclude any contract of sale'; all sale contracts were signed by Mr. Z himself at the stall. The machines were brought from Germany for the Expo and kept at the stall; no godown was taken at Coimbatore.

4. The Company sold six CNC machines to six buyers in Tamil Nadu, all registered under GST, on 13.02.2026 to 16.02.2026. For each sale, the Company issued a 'commercial invoice' in the name of the buyer, showing the price in INR and the words 'Price final and all-inclusive. GST not applicable - supplier is a foreign company'. The invoices do not bear any GSTIN of the Company and do not show any tax. All the machines (HSN 8458, taxable at 18%) were delivered to the buyers' factories from the Expo grounds by transporters appointed by the buyers between 17.02.2026 and 25.02.2026. No input tax credit is involved. The sales are as follows:

Invoice date	Buyer and town	Machine	Price (Rs.)
13.02.2026	Buyer-1, Coimbatore	CNC turning centre	38,50,000
13.02.2026	Buyer-2, Tiruppur	Vertical machining centre	52,00,000
14.02.2026	Buyer-3, Erode	CNC lathe	27,25,000
14.02.2026	Buyer-4, Coimbatore	5-axis machining centre	61,00,000
15.02.2026	Buyer-5, Hosur	CNC turning centre	44,75,000
16.02.2026	Buyer-6, Salem	CNC lathe	31,50,000
TOTAL			**2,55,00,000**

5. A summons dated 24.02.2026 under Section 70 of the CGST Act, 2017, sent by e-mail and courier to Mr. Z at the German address, requiring him to appear at Coimbatore on 10.03.2026, was delivered on 27.02.2026 but not complied with. On 27.02.2026 the premises of the Liaison were inspected under Section 67(1) under the authority of the Additional Commissioner, and the agreement, the bank statement of the Liaison's current account, the lap-top of Mr. P (with e-mails) and copies of the six invoices were resumed under a panchnama.

6. The statement of Mr. P was recorded on 05.03.2026 under Section 70 of the CGST Act, 2017, wherein

he, inter alia, stated that: he knew that the Company had no Indian registration or bank account and that its directors had told him that 'foreign exhibitors need not take GST registration for a five-day fair'; he had received an e-mail dated 18.12.2025 from the Company's Indian tax consultant (forwarded to him on 07.01.2026), advising that a non-resident taxable person must apply for registration at least five days before commencing business and make an advance deposit of tax, and he had forwarded it to Mr. Z; Mr. Z had replied on 08.01.2026 'We sell ex-works Expo. Price is all-inclusive. Do not mention GST anywhere. Use your account so that we have no Indian paperwork.'; the entire price was credited in his account by 28.02.2026; he retained service charges of 3%, remitted Rs.1,70,00,000/- to the Company in Germany on 27.02.2026, and the balance of Rs.77,35,000/- is still in his account, which he undertook in writing not to remit. Two unsold machines (invoice value Rs.58,00,000/-) were with him awaiting re-shipment.

7. In their statements recorded on 10.03.2026 and 11.03.2026 under Section 70, the proprietors of Buyer-1, Buyer-3 and Buyer-5 stated that Mr. Z told them at the stall that the machines were sold 'ex-stock in India' at an all-inclusive price, that GST was not applicable to a foreign company and that payment was to be made to the Liaison's account. The bank statement of the Liaison's account reconciles with the six invoices (Rs.2,55,00,000/- credited in total) and with the remittance of Rs.1,70,00,000/- to Germany. The Commissioner, finding it necessary to protect the interest of revenue, ordered the provisional attachment under Section 83 of the two unsold machines and of the balance of Rs.77,35,000/- lying in the Liaison's account in FORM GST DRC-22 dated 09.03.2026.

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX GmbH (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX GmbH and the Liaison (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX GmbH and M/s AAA Engineering Services, calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice for issuance to them.

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SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX GmbH and M/s AAA Engineering Services, Coimbatore CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened by the Company (in each case read with the corresponding provisions of the Tamil Nadu Goods and Services Tax Act, 2017 [TNGST Act] and the Rules made under the two Acts):

1. **Section 24(v) read with Section 2(77) of the CGST Act, 2017** - failure to obtain registration. The Company is a 'non-resident taxable person': it occasionally undertook transactions involving the supply of goods, as a principal, but has no fixed place of business or residence in India. Section 24 overrides the threshold of Section 22(1), so the value of the supplies is irrelevant to the obligation (there is no threshold for a non-resident taxable person); and the fact that the Company is registered, or not required to be registered, in Germany is likewise irrelevant.
2. **First proviso to Section 25(1) read with Rule 13(1) of the CGST Rules, 2017** - failure to apply for registration in FORM GST REG-09 at least five days before the commencement of business, i.e. on or before 07.02.2026 for the Expo that began on 12.02.2026; **Section 27(1)** - a casual taxable person or non-resident taxable person may make taxable supplies only after the issue of the certificate of registration; and **Section 27(2)** - failure to make the advance deposit of tax equal to the estimated tax liability for the period of registration.
3. **Section 9(1) of the CGST Act, 2017** (charging section) - non-payment of tax at 18% (9% CGST + 9% TNGST) on the outward supplies of CNC machines valued at Rs.2,55,00,000/- made at the Expo from stock in India to buyers in Tamil Nadu.
4. **Section 31(1) of the CGST Act, 2017 read with Rule 46** - failure to issue tax invoices; 'commercial invoices' showing no GSTIN and no tax, and stating that GST was 'not applicable', were issued.
5. **Sections 37(1) and 39(5) of the CGST Act, 2017 read with Rule 63** - failure to furnish the statement of outward supplies and the return of a non-resident taxable person in FORM GSTR-5 with payment of tax.

Contravention by the Liaison: *M/s AAA Engineering Services is not a non-resident taxable person (it has a fixed place of business in India) and is not the supplier: the invoices were issued by the Company in its own name, so the Liaison is not an 'agent' for Schedule I and is not compulsorily registrable on that account under Section 24(vii) (Circular No. 57/31/2018-GST dated 04.09.2018). Its fault is that, knowing that the Company had no registration and having been warned in writing, it received the price in its own account at the instance of Mr. Z so that the Company would have no Indian record, and remitted it abroad. That is abetment of the offences of Sections 24(v), 25(1) and 31(1) within* ***Section 122(3)(a)*** *of the CGST Act, 2017 (read with the TNGST Act).*

Note: *Section 76 (tax collected but not paid) is not attracted because the buyers were told that the price was all-inclusive and no amount was collected as tax. Section 129 is not attracted because the goods were not detained in transit. Input tax credit is not involved and the Company could not have claimed any because it is unregistered.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX GmbH (the Company) and M/s AAA Engineering Services (the Liaison) to the following action under the CGST Act, 2017 (read with the corresponding provisions of the TNGST Act, 2017):

1. Registration - the proper officer may register the Company suo motu under **Section 25(8) read with Rule 16**, but it is not proposed: the registration of a non-resident taxable person is valid only for the period specified in the application or ninety days, whichever is earlier (extendable by a further ninety days) [Section 27(1)], and has to be sought by the person himself with an advance deposit under Rule 13(2) and through an authorised signatory resident in India [Rule 13(4)]; the Expo has ended and Mr. Z has left India, so registration would serve no purpose. The Company is to be advised to apply in FORM GST REG-09 at least five days before any future event, with the advance deposit. The absence of

registration does not reduce the liability, which arises on each supply.

2. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017** (and the TNGST Act) from the Company, as the supplier and the taxable person [Section 2(107)]. The supplies were made in February 2026, i.e. in FY 2025-26, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so a notice may be issued up to 30.06.2030 [Section 74A(2)], and the order must be passed within twelve months of the notice [Section 74A(7)], extendable by six months. The Liaison is **not** proceeded against for the tax, as it was not the supplier.

3. Interest - under **Section 50(1)** at 18% per annum on the tax, from 21.03.2026 (the day after the 20th of the month following the month of supply) till payment. Illustratively, up to 30.11.2026 (255 days), interest is Rs.5,77,208/- (Rs.2,88,604/- each under the CGST and TNGST Acts).

4. Penalty on the Company - under **Section 74A(5)(ii)**, a penalty equal to the tax due, Rs.45,90,000/- (Rs.22,95,000/- each under the CGST and TNGST Acts). This is a case of suppression with intent to evade tax, argued from the evidence: (a) the Company was advised in writing on 18.12.2025 by its own Indian tax consultant that a non-resident taxable person must register five days before commencing business and make an advance deposit, and Mr. Z rejected this on 08.01.2026 with the instruction 'Do not mention GST anywhere. Use your account so that we have no Indian paperwork'; (b) invoices were issued stating that GST was 'not applicable' to a foreign company; (c) the price was received in the account of a local person so that the Company would have no Indian record; and (d) the Company's directors left India within two days of the end of the Expo. The concessions of **Section 74A(9)** (15% of the tax if paid before the notice, 25% within sixty days of the notice and 50% within sixty days of the order, with tax and interest) are available.

5. Specific offence penalties - **Section 122(1)(xi)** (failure to obtain registration), **Section 122(1)(i)** (supply of goods without issue of invoice) and **Section 122(1)(xv)** (suppression of turnover) are attracted, proposed in the alternative and without prejudice to the penalty at 4, subject to Section 75(13) (no double penalty for the same act) and Section 126. (Section 122(2) speaks of a 'registered person' and is therefore not used for an unregistered supplier.)

6. Penalty on the Liaison - under **Section 122(3)(a)** of the CGST Act, 2017/TNGST Act, a penalty which may extend to Rs.25,000/- under each Act, as an abettor of the offences in Section 122(1)(xi) and 122(1)(i). The evidence of his knowledge is his own statement and the e-mails; as the penalty at 4 is on the Company, Section 75(13) is not attracted between them.

7. Service of the notice on a non-resident - Section 169 permits service by registered post, speed post or courier with acknowledgement due to the last known address of the person or his authorised representative, by e-mail, by making it available on the common portal (not possible here, as the Company has no registration) and, if these are not practicable, by newspaper publication or affixing. The notice is therefore sent by courier and speed post to the German address (the delivery report is to be filed) and by e-mail to Mr. Z, and a copy is handed over to the Liaison. As the agreement authorises the Liaison to receive money and arrange logistics but not to receive legal notices, service on the Liaison alone is not safe service on the Company. If the Company does not respond, the matter is decided ex parte after the opportunity of hearing [Section 75(4)].

8. Recovery against a foreign supplier - the order cannot be executed against the Company's assets in Germany under the GST law; **Sections 78 and 79** reach only persons, money and property in India: (a) the two unsold machines, by detention and sale under Section 79(1)(b); (b) money held by any person for or on account of the Company, here the Rs.77,35,000/- in the Liaison's account, by notice in FORM GST DRC-13 under Section 79(1)(c) (a person who thereafter pays the money to the Company in disregard of the notice becomes personally liable to that extent); (c) any other property or bank account of the Company in India, by distraint or by certificate to the Collector [Section 79(1)(d), (e)]. Before the order, **provisional attachment under Section 83** protects the revenue (done on 09.03.2026) against the property of the 'taxable person', which includes a person liable to be registered [Section 2(107)]. Section 83 does not reach the Liaison's own property, since he is not a person falling within Section 122(1A); the balance in his account can be reached only to the extent it is established to be the Company's money. Section 79 does not make the Liaison liable for the Company's tax.

9. Alternative route (not adopted) - assessment of an unregistered person under Section 63 (FORM GST

ASMT-14) is available, but the records are complete, fraud is alleged and the penalty provision of Section 74A is required; the regular demand route is preferred. Seizure and confiscation of the unsold machines (Section 130) is not proposed in this notice.

10. Prosecution - Section 132(1)(a) has been considered (supply of goods without invoice with intent to evade tax). The tax involved (Rs.45,90,000/- including the State tax) is below Rs.2 crore, the lowest monetary threshold applicable to that clause, so prosecution is not proposed.

Illustrative working of the tax proposed to be demanded (no threshold is available to a non-resident taxable person):

Particulars	Taxable value (Rs.)	CGST @9% (Rs.)	TNGST @9% (Rs.)	Total tax (Rs.)	Penalty 74A(5)(ii) (Rs.)
Buyer-1 (13.02.2026)	38,50,000	3,46,500	3,46,500	6,93,000	6,93,000
Buyer-2 (13.02.2026)	52,00,000	4,68,000	4,68,000	9,36,000	9,36,000
Buyer-3 (14.02.2026)	27,25,000	2,45,250	2,45,250	4,90,500	4,90,500
Buyer-4 (14.02.2026)	61,00,000	5,49,000	5,49,000	10,98,000	10,98,000
Buyer-5 (15.02.2026)	44,75,000	4,02,750	4,02,750	8,05,500	8,05,500
Buyer-6 (16.02.2026)	31,50,000	2,83,500	2,83,500	5,67,000	5,67,000
TOTAL	**2,55,00,000**	**22,95,000**	**22,95,000**	**45,90,000**	**45,90,000**

Money position (to show what can be recovered from the Liaison):

Particulars	Amount (Rs.)
Price received by the Liaison from the six buyers (by 28.02.2026)	2,55,00,000
Less: service charges retained by the Liaison (3%)	7,65,000
Less: remitted to the Company in Germany on 27.02.2026	1,70,00,000
Balance lying in the Liaison's account (attached on 09.03.2026)	**77,35,000**

Basis: *The taxable value is taken as the price actually received, as no tax was separately charged; the invoices said that the price was 'all-inclusive', which the Company may use to claim cum-tax valuation (price = value + tax) at the adjudication stage - the Rs.77,35,000/- lying in the Liaison's account, even if attached in full, covers less than the tax demanded (Rs.45,90,000/-), so recovery will have to be pursued against the two machines and against any receivable of the Company in India. The due date for the return is taken as the 20th of the following month for the purpose of interest; Rule 63 provides an earlier date for non-resident taxable persons, which would only increase the interest.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, (1) M/s XXX GmbH, a company incorporated in Germany, having its registered office at YYYY, Stuttgart, Germany, through its Managing Director Mr. Z (the Company), and (2) M/s AAA Engineering Services, a proprietary concern of Mr. P, Coimbatore, Tamil Nadu (the Liaison), are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Coimbatore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the six CNC machines of aggregate value of Rs.2,55,00,000/- supplied by the Company from Stall No. 214 at the Southern Industrial Machinery Expo 2026 during 13.02.2026 to 16.02.2026 should not be held to be taxable supplies made by it as a non-resident taxable person in contravention of Section 24(v) read with Section 2(77) and the first proviso to Section 25(1) and Section 27 of the

CGST Act, 2017/TNGST Act, 2017, without obtaining registration;

(ii) an amount of Rs.22,95,000/- (Central tax) and Rs.22,95,000/- (Tamil Nadu State tax), total Rs.45,90,000/- (Rupees Forty-Five Lakh Ninety Thousand only), being tax not paid on the taxable value of Rs.2,55,00,000/-, should not be demanded and recovered from the Company under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017 (and, if the supplies are held to be inter-State supplies under Section 7(5)(c) of the IGST Act, 2017, the integrated tax of Rs.45,90,000/- under Section 74A read with Section 20 of the IGST Act, 2017, in the alternative);

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 should not be charged and recovered from the Company on the tax at (ii) above, from 21.03.2026 till the date of payment;

(iv) a penalty of Rs.22,95,000/- (Central tax) and Rs.22,95,000/- (Tamil Nadu State tax), total Rs.45,90,000/-, being equal to the tax due, should not be imposed on the Company under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on the Company under Section 122(1)(xi), Section 122(1)(i) and Section 122(1)(xv) of the CGST Act, 2017/TNGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017; and

(vi) a penalty should not be imposed on the Liaison under Section 122(3)(a) of the CGST Act, 2017/TNGST Act, 2017, for having abetted the offences at (v) above.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-COIMBATORE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Coimbatore CGST Commissionerate, Tamil Nadu

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Tamil Nadu Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Services Tax Act, 2017)

To,
1. M/s XXX GmbH,
(through its Managing Director, Mr. Z),
YYYY, Stuttgart, Germany [by speed post/courier, and by e-mail].
2. M/s AAA Engineering Services,
(Proprietor: Mr. P),
Coimbatore, Tamil Nadu.

(hereinafter referred to as 'the Company' and 'the Liaison' respectively, and together as 'the Noticees')

1. WHEREAS the Southern Engineering Manufacturers' Association held the 'Southern Industrial Machinery Expo 2026' at the Exhibition Grounds, Coimbatore, from 12.02.2026 to 16.02.2026. The exhibitor list furnished by the organiser shows that Stall No. 214 in Hall B was booked on 10.12.2025 by the Company, a company incorporated in Germany, which stated in the booking form that it had no GSTIN as it was a 'foreign exhibitor' (RUD-1). Mr. Z, the Managing Director of the Company, was in India from 10.02.2026 to 18.02.2026 (RUD-2). Verification of the GST common portal on 21.02.2026 showed that no application for registration as a non-resident taxable person had been made by or for the Company (RUD-3), and the Company has no branch, office, employee, godown or bank account in India;

2. AND WHEREAS under a liaison and service agreement dated 15.12.2025, the Company appointed the Liaison to receive visitors, to receive the price from Indian buyers in its own account at Coimbatore, to arrange logistics and installation, and to remit the balance price to the Company after retaining 3% (RUD-4). The Liaison had no authority to conclude any sale; the contracts were concluded by Mr. Z himself at the stall;

3. AND WHEREAS the Company sold six CNC machines (HSN 8458) to six registered buyers in Tamil Nadu from the stall, by commercial invoices dated 13.02.2026 to 16.02.2026 aggregating Rs.2,55,00,000/-, bearing the legend 'Price final and all-inclusive. GST not applicable - supplier is a foreign company', without any GSTIN and without any tax (RUD-5); the machines were delivered to the buyers from the Expo grounds between 17.02.2026 and 25.02.2026. The buyers-wise details are in Annexure-A;

4. AND WHEREAS the summons dated 24.02.2026 to Mr. Z under Section 70, delivered on 27.02.2026, was not complied with (RUD-6), and the premises of the Liaison inspected under Section 67(1) on 27.02.2026 yielded the agreement, the bank statement, the six invoices and the lap-top of Mr. P (RUD-7);

5. AND WHEREAS the statement of Mr. P was recorded on 05.03.2026 under Section 70 (RUD-8), wherein he, inter alia, admitted and stated that:

- he knew that the Company had no Indian registration and no Indian bank account, and was told by its directors that 'foreign exhibitors need not take GST registration for a five-day fair';
- he received on 07.01.2026 the e-mail dated 18.12.2025 of the Company's Indian tax consultant advising that a non-resident taxable person must apply for registration at least five days before

commencing business and make an advance deposit of tax, and he forwarded it to Mr. Z;

- Mr. Z replied on 08.01.2026: 'We sell ex-works Expo. Price is all-inclusive. Do not mention GST anywhere. Use your account so that we have no Indian paperwork.' (RUD-9);
- the price of Rs.2,55,00,000/- was credited in his current account by 28.02.2026, he retained 3% (Rs.7,65,000/-), remitted Rs.1,70,00,000/- to the Company in Germany on 27.02.2026, and Rs.77,35,000/- is lying in his account, which he has undertaken in writing not to remit; and
- two unsold machines of invoice value Rs.58,00,000/- are with him awaiting re-shipment;

6. AND WHEREAS the proprietors of Buyer-1, Buyer-3 and Buyer-5 stated on 10.03.2026 and 11.03.2026 under Section 70 that Mr. Z told them at the stall that the machines were being sold ex-stock in India at an all-inclusive price, that GST was not applicable to a foreign company, and that payment was to be made to the Liaison's account, and that no tax invoice was given (RUD-10). The bank statement of the Liaison reconciles with the six invoices and the remittance to Germany (RUD-11). The two unsold machines and the balance of Rs.77,35,000/- in the account of the Liaison were provisionally attached under Section 83 in FORM GST DRC-22 dated 09.03.2026 (RUD-12);

7. AND WHEREAS it appears that the Company, which has no fixed place of business or residence in India and occasionally undertook the supply of goods in India as a principal, is a non-resident taxable person within the meaning of Section 2(77) of the Act, who was liable to be registered under Section 24(v) irrespective of the value of its supplies, was required to apply for registration at least five days before commencement of business (that is, by 07.02.2026) under the first proviso to Section 25(1) and Rule 13, and to make an advance deposit of tax under Section 27(2), but did not do so; and that it supplied the machines without issuing tax invoices, without payment of tax and without furnishing any return;

8. AND WHEREAS the tax payable at 18% (9% CGST + 9% TNGST) on the taxable value of Rs.2,55,00,000/- is Rs.22,95,000/- each under the CGST Act and the TNGST Act, total Rs.45,90,000/- (Annexure-A);

9. AND WHEREAS the Company was advised in writing on 18.12.2025 of the requirement of registration and the advance deposit, rejected the advice on 08.01.2026 with the instruction 'Do not mention GST anywhere', issued invoices stating that GST was not applicable, had the price received in the account of a local person 'so that we have no Indian paperwork', and left India within two days of the end of the Expo. The non-payment of tax therefore appears to be by reason of suppression of facts with intent to evade tax, attracting penalty under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017;

10. AND WHEREAS it appears that the Liaison, knowing that the Company had no registration and having forwarded to Mr. Z the written advice that registration and advance deposit were required, aided the Company in making the said supplies without registration, tax invoice and payment of tax, by receiving the price in its own account at the Company's request to avoid Indian records and by remitting it abroad, and thereby abetted the offences under Section 122(1)(xi) and Section 122(1)(i), rendering itself liable to penalty under Section 122(3)(a) of the CGST Act, 2017/TNGST Act, 2017;

11. AND WHEREAS it thus appears that the Company has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the TNGST Act, 2017):

- Section 24(v) read with Section 2(77) - failure to obtain registration as a non-resident taxable person;
- First proviso to Section 25(1) read with Rule 13(1), and Section 27(1) and (2) - failure to apply for registration five days before commencement of business and to make the advance deposit;
- Section 9(1) - non-payment of tax due on outward supplies of goods;
- Section 31(1) read with Rule 46 - failure to issue tax invoices;
- Sections 37(1) and 39(5) read with Rule 63 - failure to furnish the statement of outward supplies and the return in FORM GSTR-5 and to pay the tax;

12. AND WHEREAS the aforesaid acts and omissions render the Company liable to (a) demand and recovery of tax under Section 74A; (b) interest under Section 50(1); (c) penalty under Section 74A(5)(ii); and (d) penalty under Section 122(1)(xi), 122(1)(i) and 122(1)(xv) (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c)); and the Liaison liable to penalty under Section 122(3)(a);

NOW, THEREFORE

(1) M/s XXX GmbH, through its Managing Director Mr. Z, and (2) M/s AAA Engineering Services, Proprietor Mr. P, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Coimbatore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the six CNC machines of aggregate value of Rs.2,55,00,000/- supplied by the Company from Stall No. 214 at the Southern Industrial Machinery Expo 2026 during 13.02.2026 to 16.02.2026 should not be held to be taxable supplies made by it as a non-resident taxable person in contravention of Section 24(v) read with Section 2(77) and the first proviso to Section 25(1) and Section 27 of the CGST Act, 2017/TNGST Act, 2017, without obtaining registration;

(ii) an amount of Rs.22,95,000/- (Central tax) and Rs.22,95,000/- (Tamil Nadu State tax), total Rs.45,90,000/- (Rupees Forty-Five Lakh Ninety Thousand only), being tax not paid on the taxable value of Rs.2,55,00,000/- as detailed in Annexure-A to this notice, should not be demanded and recovered from the Company under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017 (and, if the supplies are held to be inter-State supplies under Section 7(5)(c) of the IGST Act, 2017, the integrated tax of Rs.45,90,000/- under Section 74A read with Section 20 of the IGST Act, 2017, in the alternative);

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 should not be charged and recovered from the Company on the tax at (ii) above, from 21.03.2026 till the date of payment;

(iv) a penalty of Rs.22,95,000/- (Central tax) and Rs.22,95,000/- (Tamil Nadu State tax), total Rs.45,90,000/-, being equal to the tax due, should not be imposed on the Company under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on the Company under Section 122(1)(xi), Section 122(1)(i) and Section 122(1)(xv) of the CGST Act, 2017/TNGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017;

(vi) a penalty should not be imposed on the Liaison under Section 122(3)(a) of the CGST Act, 2017/TNGST Act, 2017, for having abetted the offences at (v) above.

13. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits; the Company may reply through its authorised representative in India or by e-mail;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticees (or their authorised representatives) may appear in person, through counsel or, in the case of the Company, through video-conference;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/TNGST Act, 2017, whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said notice are deemed to be concluded;
- the Liaison is informed that the balance of Rs.77,35,000/- lying in its account and the two unsold machines are under provisional attachment (FORM GST DRC-22 dated 09.03.2026) and are not to be remitted, released or dealt with, and that on determination of the amount payable, recovery may be made from money held by it for or on account of the Company under Section 79(1)(c);
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017/TNGST Act, 2017, or any other law for the time being in force (including the Customs Act, 1962, in respect of the machines imported for the Expo).

List of Relied Upon Documents (RUDs):

RUD-1: Exhibitor list and stall booking form dated 10.12.2025 of the Company, furnished by the organiser;

RUD-2: Immigration record of Mr. Z (entry 10.02.2026, exit 18.02.2026);

RUD-3: Print-out of the GST common portal verification dated 21.02.2026;

RUD-4: Liaison and service agreement dated 15.12.2025;

RUD-5: The six commercial invoices dated 13.02.2026 to 16.02.2026;

RUD-6: Summons dated 24.02.2026 to Mr. Z with e-mail record and courier delivery report;

RUD-7: Panchnama dated 27.02.2026 with the documents and the lap-top data resumed from the Liaison;

RUD-8: Statement of Mr. P recorded under Section 70 on 05.03.2026, with his undertaking not to remit the balance;

RUD-9: E-mails dated 18.12.2025 (tax consultant), 07.01.2026 (forwarding) and 08.01.2026 (Mr. Z's reply), with the certificate required for the admissibility of the electronic record;

RUD-10: Statements of the proprietors of Buyer-1, Buyer-3 and Buyer-5 recorded on 10.03.2026 and 11.03.2026 under Section 70;

RUD-11: Bank statement of the Liaison's current account for February-March 2026 and the remittance advice dated 27.02.2026;

RUD-12: Order of provisional attachment in FORM GST DRC-22 dated 09.03.2026;

Annexure-A: Invoice-wise statement of sales and tax calculation [as per the working in Part B and the table in the Situation].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Coimbatore CGST Commissionerate

Copy to: The Additional/Joint Commissioner, Coimbatore CGST Commissionerate, for information; the Deputy Commissioner (Customs), for information regarding the machines imported for the Expo.

Drafting note (not part of the notice):

- *The addressees, jurisdictional range/officer, F. No./DIN, dates, GSTINs of the buyers and similar particulars shown in square brackets/blanks or by placeholders (M/s XXX GmbH, Mr. Z, M/s AAA Engineering Services, Mr. P, Buyer-1 to Buyer-6) are illustrative and must be completed with the correct particulars before issue.*
- ***Teaching point - who is the 'charged person' when the supplier is abroad.*** *The tax, interest and the fraud penalty are demanded only from the supplier, the Company. The local agent is charged, but as an abettor under Section 122(3)(a), not for the tax: the GST law has no provision making the Indian agent of a non-resident taxable person liable for the principal's tax (compare Exercise-55, where the agent is himself a 'supplier', and Exercise-54, where Section 14(2) of the IGST Act makes the Indian representative of an overseas supplier of online services liable). The second lesson is recovery: against a foreign supplier the notice is only as good as the money and goods of the supplier that remain in India (Section 83, Section 79(1)(b)/(c)). The nearest earlier exercise is Exercise-52 (casual taxable person): registration is compulsory without threshold there too, with the same five-day rule and advance deposit, but the supplier was in India and could be reached through its home State.*
- ***Is the Company really a 'non-resident taxable person'?*** *Section 2(77) requires that the person has no fixed place of business or residence in India. The facts are therefore built so that the machines stayed at the stall, no godown was taken and the Liaison could not conclude contracts. The definition of 'place of business' in Section 2(85) is wide (it covers a place where goods are stored and, as the officer should verify, a place where business is carried on through an agent); if the Liaison carried on the Company's business at Coimbatore, the Company would have a place of business in India, Section 22(1) with its threshold would apply instead of Section 24(v), and the agency would have to be examined as in Exercise-55. This must be tested before issue.*
- ***CGST/TNGST or IGST?*** *The notice proceeds on the footing that the supplies were made from stock in Tamil Nadu to buyers in Tamil Nadu and are intra-State. Because the Company is located abroad, it can*

also be argued that they are inter-State supplies under Section 7(5)(c) of the IGST Act, 2017; the rate is the same, so the integrated tax is demanded in the alternative (Section 20 of the IGST Act applies the CGST provisions to it). Tax paid on import of the machines, if any, is not adjusted here, since an unregistered Company cannot claim input tax credit; the Customs aspect is referred to the Customs authority.

- ***Fraud or non-fraud?*** *In Exercise-02 the default was by ignorance (Section 74A(5)(i)). Here Section 74A(5)(ii) rests on documentary evidence of knowledge and concealment (the 18.12.2025 advice, Mr. Z's reply of 08.01.2026, the 'GST not applicable' legend, the use of the Liaison's account, the departure from India); the e-mails are electronic records and must be produced with the certificate required for admissibility. Mr. Z is not charged personally (he is abroad and the Company acts through him); Section 137 may be considered later if prosecution becomes available. Suo motu registration (Section 25(8), Rule 16) is of no use, since registration of a non-resident taxable person is temporary (90 days) and requires an advance deposit; the right action is the demand under Section 74A.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018. Here the central tax demand is Rs.22,95,000/-, above Rs.10 lakh and up to Rs.1 crore, so the Deputy/Assistant Commissioner is the competent authority (Superintendent: up to Rs.10 lakh; Additional/Joint Commissioner: above Rs.1 crore).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 54

Supply of online information and database access or retrieval (OIDAR) services from outside India to non-taxable online recipients without registration and payment of integrated tax - Section 24(xi), Sections 2(17) and 14 of the IGST Act and Rule 14

Exercise 54: Supply of online information and database access or retrieval (OIDAR) services from outside India to non-taxable online recipients without registration and payment of integrated tax - Section 24(xi), Sections 2(17) and 14 of the IGST Act and Rule 14

Situation in Brief:

1. M/s XXX Pte. Ltd. is a company incorporated in Singapore (the 'Company') which operates 'XXXStream', an online service available by website and mobile application, offering on subscription video streaming, music streaming and cloud storage to users all over the world. It started offering the service to users in India in April 2022 at a subscription price in Indian rupees (average Rs.300 per month per subscriber), payable by credit/debit card or UPI through two Indian payment gateways, M/s PG-1 and M/s PG-2. The terms of service for Indian users say that the Company 'does not charge or collect any tax in India'. The Company has no office, employee, server or bank account in India, no GSTIN, and has never applied for registration in FORM GST REG-10 under the Simplified Registration Scheme.

2. M/s AAA Technologies India Pvt. Ltd., Bengaluru, Karnataka (AAA India), is a registered person which, under a 'marketing and support services agreement' dated 01.04.2022, represents the Company in India: it runs the marketing campaigns for XXXStream, handles all subscriber queries, billing disputes and refunds, and operates a current account at Bengaluru into which the two payment gateways settle the subscription receipts as the Company's authorised collection agent. AAA India remits the receipts every month to the Company in Singapore through its bank after retaining 8% as its fee.

3. On intelligence received on 03.01.2026 that Indian users were being charged in rupees by an overseas entity which did not appear in the GST records, the Directorate General of GST Intelligence, Bengaluru Zonal Unit, verified the common portal on 12.01.2026 and found no registration, and no FORM GSTR-5A, against the Company. By summons dated 20.01.2026 under Section 70 of the CGST Act, 2017, M/s PG-1 and M/s PG-2 furnished, on 05.02.2026 and 14.02.2026, the transaction-level data of the XXXStream subscriptions for April 2025 to March 2026, showing for each transaction the subscriber ID, the amount, the country of the bank issuing the card (or the UPI bank), the billing address country and the IP address country; 94% of the transactions by value satisfied at least two of these three indicators in favour of India; 4% of the receipts were from subscribers who had furnished a GSTIN for a 'business plan', and 2% did not satisfy two indicators (subscribers using a foreign card, a foreign billing address and a foreign IP address while travelling).

4. On 05.02.2026 the premises of AAA India were inspected under Section 67(1) of the CGST Act, 2017, and the agreement dated 01.04.2022, the statements of the collection account and the monthly remittance advices to Singapore, the subscriber-support tickets and the template replies used by the support team were resumed under a panchnama. The remittances to Singapore reconcile with the gateway data (collections less 8% fee). The support tickets include 1,846 requests by Indian subscribers for a GST invoice during FY 2025-26, to which the support team replied with a template approved by the Company's legal team: 'XXXStream is operated from Singapore and GST is not applicable to our service.'

5. The statement of Mr. P, Director of AAA India, was recorded on 10.02.2026 under Section 70 of the CGST Act, 2017, wherein he stated that AAA India provides the services described above; that in 2022 the Company's finance head told him that 'a company without an Indian presence does not need an Indian GST registration, which is for Indian entities'; that neither he nor the Company's team had read Section 14 of the IGST Act; that all the receipts, collections and remittances are accounted for in the books of AAA India and are openly shown in its audited accounts; and that no tax has been collected from subscribers or paid to the Government on the subscriptions. The Company is registered for value-added tax or goods and services tax on digital services in a number of other countries (information from its published annual report).

6. An advisory letter dated 05.03.2026, sent by e-mail and courier to the Company at Singapore, explained the position under Section 14 of the IGST Act, 2017 and invited the Company to register in FORM GST REG-10 and pay the tax. In its reply dated 20.03.2026 the General Counsel of the Company wrote that 'we are a Singapore company with no Indian presence, we had until now understood that Indian GST

does not apply to us, and we are examining the position'. No registration has been obtained and no payment has been made till date. The month-wise Indian receipts as per the gateway data are as follows:

Month	Paying Indian subscribers	Gross receipts, PG data (Rs.)	Less: receipts from GSTIN holders (Rs.)	Less: receipts failing the location test (Rs.)
Apr-2025	24,000	72,00,000	2,88,000	1,44,000
May-2025	25,500	76,50,000	3,06,000	1,53,000
Jun-2025	27,000	81,00,000	3,24,000	1,62,000
Jul-2025	28,500	85,50,000	3,42,000	1,71,000
Aug-2025	30,000	90,00,000	3,60,000	1,80,000
Sep-2025	31,500	94,50,000	3,78,000	1,89,000
Oct-2025	33,000	99,00,000	3,96,000	1,98,000
Nov-2025	34,500	1,03,50,000	4,14,000	2,07,000
Dec-2025	36,000	1,08,00,000	4,32,000	2,16,000
Jan-2026	37,500	1,12,50,000	4,50,000	2,25,000
Feb-2026	39,000	1,17,00,000	4,68,000	2,34,000
Mar-2026	40,500	1,21,50,000	4,86,000	2,43,000
TOTAL		**11,61,00,000**	**46,44,000**	**23,22,000**

7. The services (SAC 9984, 'online information and database access or retrieval services') are taxable at 18%. The value is taken as the price received, as no tax was charged. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Pte. Ltd. (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Pte. Ltd. and AAA India (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Pte. Ltd. and AAA India, calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice for issuance to them.

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SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Pte. Ltd. and M/s AAA Technologies India Pvt. Ltd., Bengaluru West CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with Section 20 of the Integrated Goods and Services Tax Act, 2017 [IGST Act], by which the provisions of the CGST Act, 2017 relating to registration, returns, payment of tax, demands and recovery, and penalties apply to integrated tax, and with the Rules made under the two Acts). No State tax is involved, because the supply is made from outside India and is an inter-State supply chargeable to integrated tax only:

1. **Section 14(1) of the IGST Act, 2017** read with Sections 2(16), 2(17) and 13(12) - failure to pay integrated tax on online information and database access or retrieval (OIDAR) services supplied from a place outside India to non-taxable online recipients. The streaming of video and music and the digital data storage are OIDAR services; the recipients are unregistered persons in the taxable territory; the place of supply is the location of the recipient, who is deemed to be located in India if two of the non-contradictory conditions of the Explanation to Section 13(12) are satisfied (here the country of the issuing bank of the card or of the UPI bank, the billing address and the IP address of the device); and the person liable to pay the tax is the **supplier located in the non-taxable territory** (Section 14(1)), i.e. the Company, and not the Indian subscribers. The tax is levied by Section 5(1) of the IGST Act at 18% on the value of the supply.
2. **Section 24(xi) of the CGST Act, 2017** (applied by Section 20 of the IGST Act), **Section 14(2) of the IGST Act and Rule 14 of the CGST Rules, 2017** - failure to obtain the single registration under the Simplified Registration Scheme (application in FORM GST REG-10, registration in FORM GST REG-06). Section 24(xi) overrides the threshold of Section 22(1); there is no threshold for an overseas OIDAR supplier. The application was due within thirty days of the date on which the Company became liable [Section 25(1)]; the five-day rule of the first proviso to Section 25(1) applies only to casual and non-resident taxable persons and not to the OIDAR supplier.
3. **Section 14(2) of the IGST Act, 2017, first proviso** (against AAA India) - AAA India is a person in the taxable territory who represents the Company for purposes in India (marketing, support and the collection of the subscription receipts), and is liable to obtain the registration and to pay the integrated tax on behalf of the Company; it has done neither.
4. **Section 39 of the CGST Act, 2017 read with Rule 64** - failure to furnish the monthly return in FORM GSTR-5A, due on the 20th of the following month, along with payment of tax; **Section 31(1) read with Rule 46** - failure to issue tax invoices (only payment receipts were issued).

Note: *(a) Section 76 is not attracted, as no amount was collected as tax from the subscribers. (b) The receipts from the subscribers who furnished a GSTIN (4%) and from transactions which do not satisfy the two-condition test (2%) are excluded from this notice: in the first case the recipient is a registered person, the supply is an import of service on which the tax is payable by the recipient on reverse charge, and in the second the place of supply is not shown to be in India. (c) The late fee of Section 47 does not apply to integrated tax, since Section 20 of the IGST Act applies the provisions on returns other than the late fee; no late fee is proposed.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX Pte. Ltd. (the Company) and AAA India to the following action under the CGST Act, 2017 as applied by Section 20 of the IGST Act, 2017:

1. Registration - the Company has to register itself in FORM GST REG-10 under the Simplified Registration Scheme, and registration is granted in FORM GST REG-06 by the officer notified for the purpose [Rule 14]. The proper officer's power of temporary registration under Section 25(8) read with Rule 16 (FORM GST REG-12) is not proposed, because it requires an application of the person under Rule 8 within ninety days and the registration under Rule 14 is the scheme specially provided for the OIDAR supplier. The non-registration does not reduce the liability, which arises on every supply.

2. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017**. The supplies were made in FY 2025-26, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so a notice may be issued up to 30.06.2030 [Section 74A(2)]; the order must be passed within twelve months of the notice [Section 74A(7)], extendable by six months. The earlier years (FY 2022-23 to FY 2024-25) are the subject of separate notices, in which Section 73/74 (up to FY 2023-24) and Section 74A (FY 2024-25) apply.

3. Who is the 'charged person' and why a Central tax officer - the integrated tax is a levy of the Union, and Section 20 of the IGST Act applies the CGST demand and recovery provisions to it; the proper officers are therefore officers of central tax (the officers of the State tax have no function in relation to integrated tax unless cross-empowered), and the notice is issued by a Central tax officer (here the Additional Commissioner, Bengaluru West, to whom the case developed by DGGI was assigned; Bengaluru West is also the jurisdiction notified for the registration of OIDAR suppliers). The person liable to pay is the **supplier**, the Company [Section 14(1)]; the Indian **representative**, AAA India, is made liable by the first proviso to Section 14(2) to pay the tax on behalf of the supplier. The demand is therefore made from both, jointly and severally; the subscribers are not charged. If the Company had no representative in India, it could have appointed one under the second proviso to Section 14(2), who would then be liable for the tax; it did not do so.

4. Interest - under **Section 50(1)** at 18% per annum on the tax of each month, from the day after the due date of FORM GSTR-5A (the 20th of the following month) till payment. Up to 30.11.2026, interest on the integrated tax is Rs.36,22,566/- (month-wise working below).

5. Penalty - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.19,64,412/-, on the Company and AAA India jointly and severally (the same tax cannot attract two separate 10% penalties). Why not Section 74A(5)(ii)? Penalty equal to the tax requires fraud, wilful misstatement or suppression of facts to evade tax. The Company did not conceal anything: it offered the service openly in India at an Indian price, the Indian receipts are fully shown in the books of AAA India, and the support replies told the subscribers openly that GST was not applied. The explanation of the Company's finance head in 2022 and the General Counsel's reply of 20.03.2026 show a mistaken belief that a company with no Indian presence is outside Indian GST, which is a failure to understand Section 14 and not an intent to evade; the fact that the Company is registered for digital services tax elsewhere, by itself, does not prove such an intent. The concession of **Section 74A(8)** is available: no penalty if the tax and interest are paid before the notice or within sixty days of its issue. The position for FY 2026-27 will have to be examined separately, because the Company has now been told of the law (advisory letter of 05.03.2026) and, if it continues not to register, suppression can be argued for the period after the reply.

6. Specific offence penalties - **Section 122(1)(xi)** (failure to obtain registration) and **Section 122(1)(i)** (supply of services without issue of invoice) are attracted against the Company, proposed in the alternative and without prejudice to the penalty at 5, subject to Section 75(13) and Section 126. As against AAA India, which is not the supplier, the failure to register and pay as representative under the first proviso to Section 14(2) carries no specific penalty clause, and a penalty under the residual **Section 125** (up to Rs.25,000/-) is proposed.

7. Service of notice abroad - Section 169 contains no special rule for a person abroad. The notice is served by speed post/courier to the address of the Company at Singapore with acknowledgement and by e-mail to the address used in the correspondence of 05.03.2026 and 20.03.2026 (the General Counsel's own reply fixes the e-mail address), the portal not being available as the Company has no registration; and a copy is delivered to AAA India, which is itself a noticee and has an address in India. The notice on AAA India is good service on AAA India; the Company's participation in the correspondence is evidence of notice to it, but the delivery report of the courier is to be placed in the file.

8. Recovery against an overseas supplier - an order cannot be executed against the Company's assets in Singapore under the GST law. The enforceable recovery is against what is in India: (a) AAA India, which is statutorily liable for the tax on behalf of the Company, can be proceeded against directly under Sections 78 and 79 (its own bank accounts, and property by distraint or certificate to the Collector); (b) money due to the Company from the payment gateways, which settle the receipts, and money held by AAA India for the Company, by notice in FORM GST DRC-13 under Section 79(1)(c); (c) provisional

attachment under Section 83 of the property, including the bank accounts, of the persons proceeded against, to protect the revenue pending the order. The notices to the two payment gateways and to the bank of AAA India are to be prepared at the stage of order.

9. Alternative route (not adopted) - assessment of an unregistered person under Section 63 (FORM GST ASMT-14) is available, but the data is complete from third-party sources, the demand route under Section 74A gives the statutory concessions and the interest and penalty provisions are required. Blocking of access to the platform, which the IGST Act provides for suppliers of online money gaming in Section 14A, is not available for OIDAR suppliers.

10. Prosecution - Section 132(1)(a) has been considered. The tax involved (Rs.1,96,44,120/-) is below Rs.2 crore, the lowest monetary threshold applicable to that clause, and in any case no intent to evade is established on the present evidence; prosecution is not proposed.

Illustrative working of the tax proposed to be demanded (no threshold is available to an overseas OIDAR supplier) and of the interest to 30.11.2026:

Month	Taxable value (Rs.)	IGST @18% (Rs.)	GSTR-5A due date	Days	Interest @18% (Rs.)
Apr-2025	67,68,000	12,18,240	20.05.2025	559	3,35,834
May-2025	71,91,000	12,94,380	20.06.2025	528	3,37,035
Jun-2025	76,14,000	13,70,520	20.07.2025	498	3,36,585
Jul-2025	80,37,000	14,46,660	20.08.2025	467	3,33,168
Aug-2025	84,60,000	15,22,800	20.09.2025	436	3,27,423
Sep-2025	88,83,000	15,98,940	20.10.2025	406	3,20,138
Oct-2025	93,06,000	16,75,080	20.11.2025	375	3,09,775
Nov-2025	97,29,000	17,51,220	20.12.2025	345	2,97,947
Dec-2025	1,01,52,000	18,27,360	20.01.2026	314	2,82,965
Jan-2026	1,05,75,000	19,03,500	20.02.2026	283	2,65,656
Feb-2026	1,09,98,000	19,79,640	20.03.2026	255	2,48,947
Mar-2026	1,14,21,000	20,55,780	20.04.2026	224	2,27,093
TOTAL	**10,91,34,000**	**1,96,44,120**			**36,22,566**

Basis: *Taxable value = gross receipts in the gateway data, less the receipts from subscribers who gave a GSTIN (Rs.46,44,000/-) and the receipts which do not satisfy two conditions of the Explanation to Section 13(12) (Rs.23,22,000/-); the gross receipts are Rs.11,61,00,000/-. If the Company shows that the price included tax, cum-tax valuation (value = price x 100/118) may be considered at the adjudication stage. Penalty at 10% of Rs.1,96,44,120/- is Rs.19,64,412/-.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, (1) M/s XXX Pte. Ltd., a company incorporated in Singapore, having its registered office at YYYY, Singapore (the Company), and (2) M/s AAA Technologies India Pvt. Ltd., Bengaluru, Karnataka (AAA India), are hereby called upon to show cause in writing to the Additional Commissioner, Central GST Commissionerate, Bengaluru West, within thirty (30) days of the receipt of this notice, as to why:

(i) the subscriptions of aggregate taxable value of Rs.10,91,34,000/- received by the Company from non-taxable online recipients in India for the OIDAR service 'XXXStream' during April 2025 to March 2026 should not be held to be taxable supplies of online information and database access or retrieval services made by the Company from a place outside India, in contravention of Section 14(1) and Section 14(2) of the IGST Act, 2017, Section 24(xi) of the CGST Act, 2017 and Rule 14 of

the CGST Rules, 2017, without registration and without payment of integrated tax;

(ii) an amount of Rs.1,96,44,120/- (Rupees One Crore Ninety-Six Lakh Forty-Four Thousand One Hundred and Twenty only), being integrated tax not paid at 18% on the said value as detailed in Annexure-A to this notice, should not be demanded and recovered from the Company, and from AAA India as the person representing the Company in India under the first proviso to Section 14(2) of the IGST Act, 2017, jointly and severally, under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be charged and recovered on the tax at (ii) above, month-wise from the day following the due date of FORM GSTR-5A for each month, till the date of payment;

(iv) a penalty of Rs.19,64,412/- should not be imposed on the Company and AAA India, jointly and severally, under Section 74A(5)(i) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 (without prejudice to the benefit available under Section 74A(8));

(v) penalty should not separately be imposed on the Company under Section 122(1)(xi) and Section 122(1)(i) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126; and

(vi) a penalty should not be imposed on AAA India under Section 125 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, for failure to obtain registration and to pay the integrated tax as the representative of the Company.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-BENGALURU WEST

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Additional Commissioner, Central GST Commissionerate, Bengaluru West, Karnataka

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017)

To,
1. M/s XXX Pte. Ltd.,
YYYY, Singapore [by speed post/courier and by e-mail],
2. M/s AAA Technologies India Pvt. Ltd.,
Bengaluru, Karnataka.

(hereinafter referred to as 'the Company' and 'AAA India' respectively, and together as 'the Noticees')

1. WHEREAS the Company, incorporated in Singapore, operates the online service 'XXXStream' (video and music streaming and cloud storage), which has been offered to users in India since April 2022 at a price in Indian rupees (average Rs.300 per month) payable by card or UPI through two Indian payment gateways; the terms of service for Indian users state that the Company 'does not charge or collect any tax in India'. The Company has no office, employee or bank account in India and no GSTIN, and has not applied for registration in FORM GST REG-10 (RUD-1, RUD-2);

2. AND WHEREAS AAA India, a registered person at Bengaluru, under a marketing and support services agreement dated 01.04.2022 (RUD-3), runs the marketing of XXXStream in India, handles subscriber queries, billing disputes and refunds, and operates a current account into which the payment gateways settle the subscription receipts as the authorised collection agent of the Company; it remits the receipts monthly to the Company in Singapore after retaining 8%;

3. AND WHEREAS the Directorate General of GST Intelligence, Bengaluru Zonal Unit, on intelligence dated 03.01.2026, verified on 12.01.2026 that the common portal shows no registration and no FORM GSTR-5A against the Company (RUD-2); the payment gateways M/s PG-1 and M/s PG-2, on summons dated 20.01.2026 under Section 70, furnished the transaction-level data of the XXXStream subscriptions for April 2025 to March 2026 showing, for each transaction, the subscriber ID, amount, country of the bank issuing the card or UPI bank, billing address country and IP address country (RUD-4). The gross receipts are Rs.11,61,00,000/-; of them, Rs.46,44,000/- are from subscribers who furnished a GSTIN and Rs.23,22,000/- are from transactions which satisfy fewer than two of the three indicators; these are excluded from this notice, leaving receipts of Rs.10,91,34,000/- from non-taxable online recipients located in India, as per Annexure-A;

4. AND WHEREAS the premises of AAA India were inspected under Section 67(1) on 05.02.2026, and the agreement, the statements of the collection account, the remittance advices to Singapore, the subscriber-support tickets and the template replies were resumed under a panchnama (RUD-5); the remittances reconcile with the gateway data (collections less the 8% fee) (RUD-6), and 1,846 Indian subscribers asked for a GST invoice during FY 2025-26, to whom the support team, on a template approved by the Company's legal team, replied that GST is not applicable to the service;

5. AND WHEREAS the statement of Mr. P, Director of AAA India, recorded on 10.02.2026 under Section 70 (RUD-7), confirms the above, and states that the Company's finance head had told him in 2022 that a company without an Indian presence does not need Indian GST registration, that nobody had examined Section 14 of the IGST Act, that all receipts and remittances are accounted for in the books of AAA India, and that no tax has been collected from the subscribers or paid to the Government;

6. AND WHEREAS, by an advisory letter dated 05.03.2026 (RUD-8), the Company was informed of the position under Section 14 of the IGST Act, 2017 and invited to register and pay the tax; in its reply dated

20.03.2026 (RUD-9) the Company's General Counsel stated that the Company had understood that Indian GST did not apply to it and was examining the position; no registration has been obtained and no payment made;

7. AND WHEREAS it appears that the services supplied by the Company, namely video and music streaming and digital data storage delivered over the internet, are online information and database access or retrieval services within Section 2(17) of the IGST Act, 2017; that they were supplied from a place outside India to unregistered persons, who are non-taxable online recipients within Section 2(16); that the place of supply is the location of the recipient under Section 13(12), the recipients being deemed to be located in India as the issuing bank, the billing address and the IP address (any two being sufficient) are in India; and that the Company, as the supplier located in the non-taxable territory, is liable to pay integrated tax at 18% under Section 14(1), and was required under Section 14(2) and Rule 14 to take the registration under the Simplified Registration Scheme in FORM GST REG-10, and under Section 24(xi) of the CGST Act, 2017 irrespective of any threshold, and to file FORM GSTR-5A monthly under Rule 64, but did none of these;

8. AND WHEREAS it appears that AAA India, which represents the Company in India for purposes of marketing, support and the collection of subscription receipts, is liable under the first proviso to Section 14(2) of the IGST Act, 2017 to obtain registration and to pay the integrated tax on behalf of the Company, and has not done so;

9. AND WHEREAS the integrated tax payable at 18% on the taxable value of Rs.10,91,34,000/- is Rs.1,96,44,120/-, as per Annexure-A;

10. AND WHEREAS the non-payment appears to be due to a mistaken understanding of the law and not to fraud, wilful misstatement or suppression of facts, as the service and its Indian price were openly offered, the receipts are fully accounted for in the books of AAA India, and the Company's stand is stated in its reply of 20.03.2026; the penalty proposed is therefore under Section 74A(5)(i), and the proceedings relate to FY 2025-26 only (the earlier years and the period from 01.04.2026 being subject matter of separate proceedings);

11. AND WHEREAS it thus appears that the Company has contravened the following provisions (and AAA India the provision at the third bullet):

- Section 14(1) of the IGST Act, 2017 - non-payment of integrated tax on OIDAR services supplied to non-taxable online recipients;
- Section 24(xi) of the CGST Act, 2017, Section 14(2) of the IGST Act, 2017 and Rule 14 of the CGST Rules, 2017 - failure to obtain registration under the Simplified Registration Scheme;
- First proviso to Section 14(2) of the IGST Act, 2017 - failure of the representative to obtain registration and to pay the tax on behalf of the supplier;
- Section 39 of the CGST Act, 2017 read with Rule 64 - failure to furnish FORM GSTR-5A and to pay the tax; and Section 31(1) read with Rule 46 - failure to issue tax invoices;

12. AND WHEREAS the aforesaid acts and omissions render the Noticees liable to (a) demand and recovery of tax under Section 74A; (b) interest under Section 50(1); (c) penalty under Section 74A(5)(i); and in addition the Company to penalty under Sections 122(1)(xi) and 122(1)(i) (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c)) and AAA India to penalty under Section 125, of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

NOW, THEREFORE

(1) M/s XXX Pte. Ltd., Singapore, and (2) M/s AAA Technologies India Pvt. Ltd., Bengaluru, are hereby called upon to show cause in writing to the Additional Commissioner, Central GST Commissionerate, Bengaluru West, within thirty (30) days of the receipt of this notice, as to why:

(i) the subscriptions of aggregate taxable value of Rs.10,91,34,000/- received by the Company from non-taxable online recipients in India for the OIDAR service 'XXXStream' during April 2025 to March 2026 should not be held to be taxable supplies of online information and database access or retrieval services made by the Company from a place outside India, in contravention of Section

14(1) and Section 14(2) of the IGST Act, 2017, Section 24(xi) of the CGST Act, 2017 and Rule 14 of the CGST Rules, 2017, without registration and without payment of integrated tax;

(ii) an amount of Rs.1,96,44,120/- (Rupees One Crore Ninety-Six Lakh Forty-Four Thousand One Hundred and Twenty only), being integrated tax not paid at 18% on the said value as detailed in Annexure-A to this notice, should not be demanded and recovered from the Company, and from AAA India as the person representing the Company in India under the first proviso to Section 14(2) of the IGST Act, 2017, jointly and severally, under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be charged and recovered on the tax at (ii) above, month-wise from the day following the due date of FORM GSTR-5A for each month, till the date of payment;

(iv) a penalty of Rs.19,64,412/- should not be imposed on the Company and AAA India, jointly and severally, under Section 74A(5)(i) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 (without prejudice to the benefit available under Section 74A(8));

(v) penalty should not separately be imposed on the Company under Section 122(1)(xi) and Section 122(1)(i) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126; and

(vi) a penalty should not be imposed on AAA India under Section 125 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, for failure to obtain registration and to pay the integrated tax as the representative of the Company.

13. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits; the Company may reply by e-mail through an authorised representative;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticees (or their authorised representatives) may appear in person, through counsel or by video-conference;
- attention is drawn to Section 74A(8) of the CGST Act, 2017, whereby, if the tax and interest are paid before the issue of the notice or within sixty days of its issue, no penalty is leviable and the proceedings in respect of the said notice are deemed to be concluded; and to the Simplified Registration Scheme (FORM GST REG-10) under which the Company can register and file FORM GSTR-5A;
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017, the IGST Act, 2017 or any other law for the time being in force, and to separate proceedings for the earlier years and for the period from 01.04.2026.

List of Relied Upon Documents (RUDs):

RUD-1: Print-outs of the XXXStream website and the app pages for India, with the terms of service for Indian users, as downloaded on 15.01.2026;

RUD-2: GST common portal verification report dated 12.01.2026 (no registration or GSTR-5A against the Company);

RUD-3: Marketing and support services agreement dated 01.04.2022 between the Company and AAA India;

RUD-4: Transaction-level data furnished by M/s PG-1 and M/s PG-2 on 05.02.2026 and 14.02.2026 on summons dated 20.01.2026, with the summary prepared by the department (month-wise and indicator-wise);

RUD-5: Panchnama dated 05.02.2026 with the documents resumed from AAA India, including the subscriber-support tickets and template replies;

RUD-6: Statements of the collection account of AAA India and the remittance advices to Singapore for April 2025 to March 2026;

RUD-7: Statement of Mr. P, Director of AAA India, recorded under Section 70 on 10.02.2026;

RUD-8: Advisory letter dated 05.03.2026 to the Company with the e-mail and courier delivery records;

RUD-9: Reply dated 20.03.2026 of the General Counsel of the Company;

Annexure-A: Month-wise statement of receipts, taxable value and integrated tax [as per the table in the Situation and the working in Part B].

(_____)
Additional Commissioner
Central GST Commissionerate, Bengaluru West

Copy to: The Additional Director General, DGGI, Bengaluru Zonal Unit, for information.

Drafting note (not part of the notice):

- *The addressees, jurisdictional officer, F. No./DIN, dates, the names of the payment gateways and similar particulars shown in square brackets/blanks or by placeholders (M/s XXX Pte. Ltd., YYYY, M/s AAA Technologies India Pvt. Ltd., Mr. P, M/s PG-1, M/s PG-2) are illustrative and must be completed with the correct particulars before issue.*
- ***Teaching point - an inter-State (integrated tax) notice on a foreign supplier of online services.*** *The supplier abroad is the person liable to pay the tax (Section 14(1)), not the Indian subscribers; if there is an Indian representative, he is made liable by the first proviso to Section 14(2); and the notice is under the IGST Act through the CGST machinery (Section 20), by a Central tax officer. Compare Exercise-53 (non-resident taxable person selling goods in India), where the agent was only an abettor, and Exercise-22 (import of services), where the Indian recipient pays on reverse charge: that route applies here only to the receipts from the subscribers who are registered persons, which have been carved out. Evidence in this class of case is third-party data (payment gateways, bank remittances, IP and billing data), and the place of supply must be proved from the 'two of the non-contradictory conditions' of the Explanation to Section 13(12).*
- ***Fraud or non-fraud?*** *The notice is under Section 74A(5)(i), because the Company's non-registration is explained by a mistaken belief, openly stated, and nothing was hidden (compare Exercise-52, where concealment justified Section 74A(5)(ii)). The advisory letter of 05.03.2026 changes the position for the future: if the Company continues to supply without registering after its reply, the notice for FY 2026-27 can allege suppression. The earlier years are not part of this exercise; for FY 2022-23 and 2023-24 Sections 73/74 apply and the limitation periods under those sections have to be checked.*
- ***Value and rate.*** *The value is the price received, as no tax was charged; cum-tax valuation may be claimed. The rate of 18% is that for heading 9984 (including OIDAR); no exemption applies, as the education exemptions are for educational institutions and not for streaming platforms. Late fee does not apply to integrated tax.*
- *The draft should be settled before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 and of the officer to whom the case has been assigned as the proper officer for the Company. Here the integrated tax demanded is Rs.1.96 crore, above Rs.1 crore, so the Additional/Joint Commissioner is the competent authority (Superintendent: up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 55

Commission agent supplying goods on behalf of two principals without registration - who must register and who is the 'supplier' - Section 24(vii), Section 2(5), Section 2(105) and Schedule I para 3

Exercise 55: Commission agent supplying goods on behalf of two principals without registration - who must register and who is the 'supplier' - Section 24(vii), Section 2(5), Section 2(105) and Schedule I para 3

Situation in Brief:

1. Mr. Z, proprietor of M/s XXX, YYYY, Rajkot, Gujarat, is a commission agent in the wholesale tile market at Rajkot. He is not registered under GST. Since 01.10.2025 he has been selling the wall and floor tiles (HSN 6907, taxable at 18%) of two manufacturers of Morbi, Gujarat, to dealers in Rajkot and Jamnagar, and collecting the price from the dealers. The two arrangements differ, as set out below.

2. **M/s AAA** (partner Mr. Q) is registered under GST. It sends the tiles from its factory at Morbi directly to the dealers, issues a **tax invoice in its own name** to each dealer and pays tax on it. Mr. Z canvasses orders from the dealers, collects the price in cheque/UPI in the name of AAA and hands it over weekly; AAA pays him a commission of 5% of the invoice value every month against a 'commission bill' of M/s XXX, which carries no GSTIN and no tax. The tax paid by AAA on its invoices is shown in its returns.

3. **M/s BBB**, Mr. P, proprietor, a tile unit at Morbi which started production on 01.10.2025, is not registered, has no other customer, and has not issued any invoice. BBB sends its tiles to the godown of Mr. Z at Rajkot on delivery challans, and Mr. Z sells them to the dealers **in his own name**, by 'sale bills' of M/s XXX which carry no GSTIN and no tax, collects the price in his own bank account and remits 90% of the price of each month's sales to BBB every month, retaining 10%. He sends BBB a monthly 'account sales' statement. The stock register of the godown shows that each month's consignments were sold in the same month, and there was no stock at the end of January 2026.

4. Acting on a complaint by a dealer, who was refused a tax invoice by M/s XXX, the premises (office and godown) of Mr. Z were inspected under Section 67(1) of the CGST Act, 2017 on 17.02.2026 under the authority of the Joint Commissioner, and the sale-bill books, the stock register, the party ledgers, the monthly account-sales statements of BBB, the commission bills to AAA and the bank statements were resumed under a panchnama. Verification of the GST common portal on 17.02.2026 showed that neither Mr. Z nor Mr. P holds any registration. A summons dated 18.02.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared and gave his statement on 20.02.2026; summonses were issued to Mr. P and to Mr. Q, and their statements were recorded on 24.02.2026 and 25.02.2026.

5. Mr. Z stated that he works as a commission agent for AAA and BBB; that for AAA the goods are invoiced by AAA and AAA pays GST; that for BBB he sells under his own bills and keeps 10%; that he thought that 'GST is the headache of the principal' and that a commission agent does not need a GST number; that BBB told him that no GST was needed since 'the tiles go under the agent's bill'; and that he did not collect any amount as tax from the dealers. Mr. P stated that he regarded the tiles as 'sent on commission to an agent' and not as sold to Mr. Z, that the sale was the agent's, that he did not issue invoices for that reason, and that he never checked the limit of turnover. Mr. Q produced the tax invoices, the returns and the commission statements of AAA, which reconcile with the commission bills of Mr. Z. Both Mr. Z and Mr. P produced all their records voluntarily, and the sale bills of Mr. Z, the account-sales statements and the remittances to BBB (90%) reconcile with each other. The month-wise position is as follows:

Month	Sale bills of M/s XXX for BBB's tiles (Rs.)	Invoices of AAA to dealers through Mr. Z (Rs.)	Commission from AAA @5% (Rs.)
Oct-2025	31,00,000	14,00,000	70,000
Nov-2025	36,00,000	16,00,000	80,000
Dec-2025	42,00,000	18,00,000	90,000
Jan-2026	33,00,000	16,00,000	80,000
TOTAL	**1,42,00,000**	**64,00,000**	**3,20,000**

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX and by M/s BBB (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against them (under heading Consequences of Contravention of legal Provisions), and say why no action is proposed against M/s AAA.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX (Mr. Z) and M/s BBB (Mr. P), calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice for issuance to them.

***

SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, and M/s BBB, Prop. Mr. P, Rajkot CGST Commissionerate)

A. CONTRAVENTION

The first question is: who is the 'supplier' in each of the two arrangements? Section 2(5) defines an 'agent' as a person, including a commission agent, who carries on the business of supply or receipt of goods or services on behalf of another; Section 2(105) says that a 'supplier' includes an agent acting as such on behalf of the supplier; and para 3 of Schedule I treats as a supply, even without consideration, the supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal. As explained in Circular No. 57/31/2018-GST dated 04.09.2018 (paras 7 to 9), the test is whether the agent issues the invoice for the further supply in **his own name**: if he does, the principal's supply to the agent is within para 3 of Schedule I and the agent must register under Section 24(vii) (the disclosure of the principal's name being immaterial); if the principal himself invoices the customer, the agent is not an agent for the purposes of Schedule I and is not compulsorily registrable under Section 24(vii) on that account.

	Arrangement with AAA	Arrangement with BBB
Who invoices the dealer?	AAA, in its own name	Mr. Z, in his own name
Supplier of the goods to the dealer	AAA	Mr. Z (Section 2(105)); BBB has supplied the goods to Mr. Z
Schedule I, para 3	Not attracted (agent does not invoice in own name)	Attracted: BBB's supply to Mr. Z is a supply, to be invoiced by BBB to Mr. Z, valued under Rule 29
Section 24(vii) for Mr. Z	Not compulsory on this account	Compulsory
Mr. Z's supply of services	Commission to AAA, taxable	None (his 10% is margin in the Rule 29 value, not a separate service)
Position of the principal	Registered, pays tax: no default	Unregistered, no tax paid: default

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017 [GGST Act] and the Rules made under the two Acts):

By Mr. Z (M/s XXX):

1. **Section 24(vii) of the CGST Act, 2017** - failure to obtain registration; Mr. Z supplied goods on behalf of another taxable person as an agent, in his own name, and the Section overrides the threshold of Section 22(1) (in any case his aggregate turnover, which under the Explanation to Section 22 includes supplies made on behalf of all his principals, exceeded the limit in October 2025 itself). **Section 25(1)** - failure to apply within thirty days of becoming liable, i.e. by 31.10.2025.
2. **Section 9(1)** - non-payment of tax at 18% (9% CGST + 9% GGST) on (a) the tiles of BBB sold by him in his own name, Rs.1,42,00,000/-, and (b) the commission of Rs.3,20,000/- received from AAA, which is a taxable supply of services by a person liable to be registered (the threshold exemption is not available to a person who is liable under Section 24, and his aggregate turnover exceeds the threshold in any case). The tax on AAA's invoices is not demanded from him, as AAA has paid it.
3. **Section 31(1) of the CGST Act, 2017 read with Rule 46** - failure to issue tax invoices (sale bills without GSTIN and tax were issued to the dealers, and commission bills without GSTIN and tax to AAA); **Sections 37(1) and 39(1)** - failure to furnish FORM GSTR-1 and FORM GSTR-3B with payment of tax.

By Mr. P (M/s BBB):

4. **Section 22(1) of the CGST Act, 2017** - failure to obtain registration: BBB is a supplier exclusively of goods whose aggregate turnover exceeded Rs.40 lakh (the limit in a State which is not a special category

State; Notification No. 10/2019-Central Tax) in November 2025, the cumulative value of his supplies to Mr. Z (Rs.60,30,000/- up to 30.11.2025) having crossed the limit; and **Section 25(1)** - failure to apply within thirty days of that date. BBB's supplies to Mr. Z are supplies under para 3 of Schedule I, and they are intra-State. Section 24(vii) is not the provision for BBB, which is the principal, not the agent.

5. **Section 9(1)** - non-payment of tax at 18% on the value of the supplies to Mr. Z in excess of Rs.40 lakh, i.e. Rs.87,80,000/- (the threshold exemption is available for the first Rs.40 lakh because BBB is not liable under Section 24); **Section 31(1) read with Rule 46** - failure to issue tax invoices to Mr. Z (the supply under para 3 of Schedule I has to be invoiced, even though there is no separate consideration); **Sections 37(1) and 39(1)** - failure to file FORM GSTR-1 and FORM GSTR-3B.

Note: *No contravention is attributed to M/s AAA: it is registered, invoiced the dealers in its own name and paid the tax; Mr. Z was not its Schedule I agent, and the commission was paid against bills without tax, which is the default of Mr. Z and not of AAA. Section 76 is not attracted because no amount was collected as tax. Section 129 is not attracted. Input tax credit: Mr. Z, being unregistered, cannot claim credit of any tax payable on BBB's supplies to him (Section 16(1) allows credit to a registered person, and credit of the stock in hand is allowed only to a person who applied within thirty days of becoming liable, Section 18(1)(a)), and the demands on BBB and on Mr. Z are therefore both made at the gross amounts.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX (Mr. Z) and M/s BBB (Mr. P) to the following action under the CGST Act, 2017 (read with the corresponding provisions of the GGST Act, 2017):

1. Registration - the proper officer may register the persons suo motu under **Section 25(8) read with Rule 16**; since the two persons are carrying on business, the registration (temporary, in FORM GST REG-12, effective from the date of the order, to be followed by an application within ninety days under Rule 8 [Rule 16(3)]) is proposed for both, so that returns are filed from now on. The tax is nevertheless payable from the date of liability: 01.10.2025 for Mr. Z (Section 24(vii), no threshold), and November 2025, when the limit of Rs.40 lakh was crossed, for BBB.

2. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017** (and the GGST Act). The supplies were made in FY 2025-26, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so a notice may be issued up to 30.06.2030 [Section 74A(2)]; the order must be passed within twelve months of the notice [Section 74A(7)], extendable by six months. The tax is demanded from **Mr. Z** (the supplier to the dealers of BBB's goods, and the supplier of the commission service) and from **Mr. P** (the supplier to Mr. Z); the two demands are for two different supplies and are not alternatives. The value of BBB's supply to Mr. Z is determined under **Rule 29** (supply of goods made or received through an agent): the open market value, or at the option of the supplier 90% of the price charged by the agent to his customer where the goods are for further supply - here 90%, which is also what BBB has actually received.

3. Interest - under **Section 50(1)** at 18% per annum on the tax of each month, from the day after the due date of FORM GSTR-3B (the 20th of the following month) till payment. Up to 30.11.2026, interest is Rs.4,22,704/- on the tax of Mr. Z (Rs.2,11,352/- each under the CGST and GGST Acts) and Rs.2,42,138/- on the tax of Mr. P (Rs.1,21,069/- each) (month-wise working below).

4. Penalty - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher, under each Act: Rs.2,61,360/- (Rs.1,30,680/- each) on Mr. Z and Rs.1,58,040/- (Rs.79,020/- each) on Mr. P. Why not Section 74A(5)(ii)? The evidence shows no intent to evade tax: both persons recorded all the supplies in complete books which they produced voluntarily, the sale bills, the account-sales statements and the remittances reconcile, nothing was routed through other persons, the dealers were never told that tax was included or was not payable, and the stated reason in each case, that the agent pays or that the principal pays, is a mistaken view about the roles of the agent and the principal, which are what the Circular of 2018 was issued to clarify. The concession of **Section 74A(8)** (no penalty if the tax and interest are paid before the notice or within sixty days of its issue) is available to each.

5. Specific offence penalties - **Section 122(1)(xi)** (failure to obtain registration) and **Section 122(1)(i)** (supply of goods without issue of invoice) are attracted against each of Mr. Z and Mr. P, proposed in the alternative and without prejudice to the penalty at 4, subject to Section 75(13) (no double penalty for

the same act) and Section 126 (no penalty for minor breaches/where there is no tax effect). Section 122(3) is not used: each person is a principal offender in his own supply, not an abettor of the other.

6. Recovery - under Sections 78 and 79, if the confirmed amounts are not paid in time; the bank accounts of Mr. Z (in which he collected the price) and of Mr. P are available for recovery under Section 79(1)(a)/(c).

7. Alternative routes (not adopted) - (a) A single demand on Mr. Z at the gross amount of 100% of the dealers' price, without the separate demand on BBB, is not correct in law, because there are two supplies. (b) Section 63 (assessment of an unregistered person) is not preferred because complete records were produced. (c) Mr. Z cannot be treated as only a service provider for the BBB goods, as he invoiced the dealers in his own name: the Circular of 2018 treats this case as Schedule I, whether or not the principal's name is disclosed.

8. Prosecution - Section 132(1)(a) has been considered. The total tax involved (Rs.41,94,000/- for the two noticees including the State tax) is below Rs.2 crore, the lowest monetary threshold applicable to that clause, and no intent to evade is established; prosecution is not proposed.

Illustrative working of the tax proposed to be demanded from Mr. Z (no threshold is available as he is liable under Section 24(vii)):

Month	Taxable value: BBB's tiles + commission (Rs.)	CGST @9% (Rs.)	GGST @9% (Rs.)	Total tax (Rs.)	Interest to 30.11.2026, both Acts (Rs.)
Oct-2025	31,70,000	2,85,300	2,85,300	5,70,600	1,05,522
Nov-2025	36,80,000	3,31,200	3,31,200	6,62,400	1,12,698
Dec-2025	42,90,000	3,86,100	3,86,100	7,72,200	1,19,574
Jan-2026	33,80,000	3,04,200	3,04,200	6,08,400	84,910
TOTAL	**1,45,20,000**	**13,06,800**	**13,06,800**	**26,13,600**	**4,22,704**

Basis: *Taxable value = sale bills of BBB's tiles (Rs.1,42,00,000/-, tax Rs.25,56,000/-) + commission from AAA (Rs.3,20,000/-, tax Rs.57,600/-). The interest is worked from 21.11.2025, 21.12.2025, 21.01.2026 and 21.02.2026 for the four months. Penalty at 10% of Rs.26,13,600/- is Rs.2,61,360/-.*

Illustrative working of the tax proposed to be demanded from Mr. P (value of the supply to Mr. Z = 90% of his sale bills; threshold Rs.40 lakh available):

Month	Value of supply to Mr. Z, 90% (Rs.)	Cumulative (Rs.)	Taxable value above Rs.40 lakh (Rs.)	Tax @18%, CGST + GGST (Rs.)	Interest to 30.11.2026 (Rs.)
Oct-2025	27,90,000	27,90,000	0	0	0
Nov-2025	32,40,000	60,30,000	20,30,000	3,65,400	62,168
Dec-2025	37,80,000	98,10,000	37,80,000	6,80,400	1,05,360
Jan-2026	29,70,000	1,27,80,000	29,70,000	5,34,600	74,610
TOTAL	**1,27,80,000**		**87,80,000**	**15,80,400**	**2,42,138**

Basis: *The tax of Rs.15,80,400/- is Rs.7,90,200/- each under the CGST and GGST Acts; the penalty at 10% is Rs.1,58,040/-. The cumulative value crossed Rs.40 lakh in November 2025, so Rs.12,10,000/- of that month's supplies is exempt and the rest taxable.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, (1) M/s XXX, a proprietary concern of Mr. Z, Rajkot, Gujarat, and Mr. Z, its Proprietor, in his

personal capacity as the person constituting the said concern, and (2) M/s BBB, a proprietary concern of Mr. P, Morbi, Gujarat, and Mr. P, its Proprietor, in his personal capacity as the person constituting the said concern, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) Mr. Z, who sold the tiles of BBB in his own name to dealers and thereby supplied goods on behalf of another taxable person as an agent, should not be held liable to be registered under Section 24(vii) of the CGST Act, 2017/GGST Act, 2017 from 01.10.2025 and to pay tax on the said sales of Rs.1,42,00,000/- and on the commission of Rs.3,20,000/- received from M/s AAA;

(ii) an amount of Rs.13,06,800/- (Central tax) and Rs.13,06,800/- (Gujarat State tax), total Rs.26,13,600/-, being tax not paid on the taxable value of Rs.1,45,20,000/-, should not be demanded and recovered from Mr. Z under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) BBB, which supplied the tiles to Mr. Z within the meaning of para 3 of Schedule I to the CGST Act, 2017, should not be held liable to be registered under Section 22(1) from November 2025, and an amount of Rs.7,90,200/- (Central tax) and Rs.7,90,200/- (Gujarat State tax), total Rs.15,80,400/-, being tax not paid on the taxable value of Rs.87,80,000/-, should not be demanded and recovered from Mr. P under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iv) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered from each of them on the tax at (ii) and (iii) above, month-wise from the day following the due date of FORM GSTR-3B till the date of payment;

(v) a penalty of Rs.2,61,360/- (Rs.1,30,680/- each under the CGST and GGST Acts) on Mr. Z and of Rs.1,58,040/- (Rs.79,020/- each) on Mr. P should not be imposed under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)); and

(vi) penalty should not separately be imposed on each of them under Section 122(1)(xi) and Section 122(1)(i) of the CGST Act, 2017/GGST Act, 2017, without prejudice to (v) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-RAJKOT

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Rajkot CGST Commissionerate, Gujarat

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Gujarat Goods and Services Tax Act, 2017)

To,
1. Mr. Z, Proprietor, M/s XXX, YYYY, Rajkot, Gujarat,
2. Mr. P, Proprietor, M/s BBB, Morbi, Gujarat.

(hereinafter referred to as 'Mr. Z' and 'Mr. P' respectively, which expressions shall include their proprietary concerns, each proprietor and his concern being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017, and together as 'the Noticees')

1. WHEREAS Mr. Z is a commission agent at Rajkot and, since 01.10.2025, has been selling the tiles (HSN 6907, taxable at 18%) of M/s AAA, a registered person of Morbi, and of M/s BBB, an unregistered tile unit of Morbi owned by Mr. P, to dealers in Rajkot and Jamnagar. The premises of Mr. Z were inspected under Section 67(1) on 17.02.2026, and his sale-bill books, stock register, party ledgers, the monthly account-sales statements of BBB, the commission bills to AAA and bank statements were resumed under a panchnama (RUD-1); verification of the GST common portal showed that neither Mr. Z nor Mr. P holds any registration (RUD-2);

2. AND WHEREAS the tiles of AAA are invoiced to the dealers by AAA, in its own name, with tax; Mr. Z only canvasses the orders and collects the price in the name of AAA, and receives a commission of 5% of the invoice value against commission bills of M/s XXX without GSTIN and tax (RUD-3, RUD-4). The commission received during October 2025 to January 2026 is Rs.3,20,000/- on invoices of Rs.64,00,000/-;

3. AND WHEREAS the tiles of BBB are sent to the godown of Mr. Z at Rajkot on delivery challans and are sold by Mr. Z to the dealers in his own name by sale bills of M/s XXX without GSTIN and tax; he collects the price in his own account and remits 90% of the monthly sales to BBB, retaining 10%, and sends BBB a monthly account-sales statement (RUD-1, RUD-5). BBB has not issued any invoice to Mr. Z or to anyone, and has no other customer. The stock register shows that every consignment was sold in the month of receipt. The sale bills of Mr. Z during October 2025 to January 2026 aggregate Rs.1,42,00,000/-, as per Annexure-A, and the value of the supplies by BBB to Mr. Z at 90% thereof is Rs.1,27,80,000/-;

4. AND WHEREAS the statements of Mr. Z (RUD-6), Mr. P (RUD-7) and Mr. Q, partner of AAA (RUD-8), were recorded on 20.02.2026, 24.02.2026 and 25.02.2026 under Section 70. Mr. Z stated that he thought that GST is the concern of the principal and that a commission agent need not register; that BBB had told him that no GST was needed as the tiles went under his bill; and that he collected no tax from the dealers. Mr. P stated that he regarded the tiles as sent on commission to an agent and the sale as the agent's, that he issued no invoice for that reason, and that he never checked the turnover limit. Mr. Q produced the invoices, returns and commission statements of AAA, which reconcile with the commission bills of Mr. Z (RUD-8);

5. AND WHEREAS it appears that, as BBB's tiles were invoiced to the dealers by Mr. Z in his own name, Mr. Z supplied the goods on behalf of another taxable person as an agent within Section 2(5) and Section 2(105) of the Act, was liable to be registered under Section 24(vii) irrespective of any threshold and was required to apply within thirty days (that is, by 31.10.2025) under Section 25(1), but did not; that the supply of the goods by BBB to Mr. Z, who undertook to supply them on behalf of BBB, is a supply under para 3 of Schedule I, as clarified by Circular No. 57/31/2018-GST dated 04.09.2018, the value of which is determined under Rule 29 as 90% of the price at which Mr. Z sold the goods; that Mr. Z, being liable to

be registered, is liable to tax on the sale of the goods and on the commission of Rs.3,20,000/- received from AAA, which was a supply of services; and that Mr. Z did not issue tax invoices, pay tax or file returns;

6. AND WHEREAS it appears that BBB, a supplier exclusively of goods, whose aggregate turnover (the value of its supplies to Mr. Z being Rs.60,30,000/- up to 30.11.2025) exceeded Rs.40 lakh in November 2025, was liable to be registered under Section 22(1) and to apply within thirty days under Section 25(1), but did not; and that it supplied the goods to Mr. Z without a tax invoice, without paying tax and without filing returns;

7. AND WHEREAS the tax payable at 18% (9% CGST + 9% GGST) is Rs.26,13,600/- from Mr. Z (Rs.13,06,800/- each under the CGST Act and the GGST Act) on Rs.1,45,20,000/- and Rs.15,80,400/- from Mr. P (Rs.7,90,200/- each) on Rs.87,80,000/- (being the value above Rs.40 lakh), as per Annexure-A; no tax is demanded on the invoices of AAA, which has paid it;

8. AND WHEREAS the Noticees maintained complete records, which they produced voluntarily, the sale bills, the account-sales statements and the remittances reconcile, and each was acting on a mistaken view of the roles of the agent and the principal; there is no evidence of fraud, wilful misstatement or suppression of facts, and the penalty proposed is under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017;

9. AND WHEREAS it thus appears that Mr. Z has contravened Section 24(vii), Section 25(1), Section 9(1), Section 31(1) read with Rule 46, and Sections 37(1) and 39(1) of the CGST Act, 2017 (and the corresponding provisions of the GGST Act, 2017), and that Mr. P has contravened Section 22(1), Section 25(1), Section 9(1), Section 31(1) read with Rule 46 (read with para 3 of Schedule I), and Sections 37(1) and 39(1) of the said Acts;

10. AND WHEREAS the aforesaid acts and omissions render the Noticees liable to (a) demand and recovery of tax under Section 74A; (b) interest under Section 50(1); (c) penalty under Section 74A(5)(i); and (d) penalty under Sections 122(1)(xi) and 122(1)(i) (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c)) of the CGST Act, 2017/GGST Act, 2017;

NOW, THEREFORE

(1) M/s XXX, a proprietary concern of Mr. Z, Rajkot, and Mr. Z, its Proprietor, and (2) M/s BBB, a proprietary concern of Mr. P, Morbi, and Mr. P, its Proprietor, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) Mr. Z, who sold the tiles of BBB in his own name to dealers and thereby supplied goods on behalf of another taxable person as an agent, should not be held liable to be registered under Section 24(vii) of the CGST Act, 2017/GGST Act, 2017 from 01.10.2025 and to pay tax on the said sales of Rs.1,42,00,000/- and on the commission of Rs.3,20,000/- received from M/s AAA;

(ii) an amount of Rs.13,06,800/- (Central tax) and Rs.13,06,800/- (Gujarat State tax), total Rs.26,13,600/-, being tax not paid on the taxable value of Rs.1,45,20,000/- as detailed in Annexure-A to this notice, should not be demanded and recovered from Mr. Z under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) BBB, which supplied the tiles to Mr. Z within the meaning of para 3 of Schedule I to the CGST Act, 2017, should not be held liable to be registered under Section 22(1) from November 2025, and an amount of Rs.7,90,200/- (Central tax) and Rs.7,90,200/- (Gujarat State tax), total Rs.15,80,400/-, being tax not paid on the taxable value of Rs.87,80,000/-, should not be demanded and recovered from Mr. P under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iv) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered from each of them on the tax at (ii) and (iii) above, month-wise from the day following the due date of FORM GSTR-3B till the date of payment;

(v) a penalty of Rs.2,61,360/- (Rs.1,30,680/- each under the CGST and GGST Acts) on Mr. Z and of

Rs.1,58,040/- (Rs.79,020/- each) on Mr. P should not be imposed under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)); and

(vi) penalty should not separately be imposed on each of them under Section 122(1)(xi) and Section 122(1)(i) of the CGST Act, 2017/GGST Act, 2017, without prejudice to (v) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

11. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticees (or their authorised representatives) may appear in person or through counsel;
- attention is drawn to Section 74A(8) of the CGST Act, 2017/GGST Act, 2017, whereby, if the tax and interest are paid before the issue of the notice or within sixty days of its issue, no penalty is leviable and the proceedings in respect of the said notice are deemed to be concluded;
- each Noticee is advised to obtain registration at once and to issue tax invoices in future (BBB to Mr. Z under para 3 of Schedule I, or directly to the dealers, and Mr. Z to the dealers if he invoices in his own name); and
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017/GGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Panchnama dated 17.02.2026 with the sale-bill books, stock register, party ledgers, account-sales statements of BBB and bank statements resumed from Mr. Z;

RUD-2: GST common portal verification report dated 17.02.2026;

RUD-3: Commission bills of M/s XXX to AAA and commission statements of AAA for October 2025 to January 2026;

RUD-4: Tax invoices of AAA to the dealers and extracts of its FORM GSTR-1 and FORM GSTR-3B for October 2025 to January 2026;

RUD-5: Delivery challans of BBB and lorry receipts for the consignments to Rajkot, and the bank statements of BBB showing the monthly remittances of 90% of the sales;

RUD-6: Statement of Mr. Z recorded under Section 70 on 20.02.2026;

RUD-7: Statement of Mr. P recorded under Section 70 on 24.02.2026;

RUD-8: Statement of Mr. Q, partner of AAA, recorded under Section 70 on 25.02.2026, with the documents produced by him;

Annexure-A: Month-wise statement of sales, taxable value and tax calculation for Mr. Z and Mr. P [as per the tables in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Rajkot CGST Commissionerate

Copy to: The Joint Commissioner, Rajkot CGST Commissionerate, for information; M/s AAA, Morbi, for information (not a Noticee).

Drafting note (not part of the notice):

- *The addressees, jurisdictional range/officer, F. No./DIN, dates and similar particulars shown in square brackets/blanks or by placeholders (M/s XXX, Mr. Z, M/s AAA, Mr. Q, M/s BBB, Mr. P, YYYY) are illustrative and must be completed with the correct particulars before issue.*
- ***Teaching point - who must register and who is the 'supplier' when an agent is involved.*** *One agent, two principals, two different answers, which depend on one fact: whose name appears on the invoice to the customer (Circular No. 57/31/2018-GST). Where the principal invoices (AAA), the principal is the supplier, the agent only supplies a commission service and is not compulsorily registrable under Section 24(vii) on that account. Where the agent invoices in his own name (BBB), the agent is a supplier, must register under Section 24(vii) irrespective of threshold, and the principal's supply to him is a supply under para 3 of Schedule I, so that the principal must register (if above the threshold), invoice the agent, and pay tax on the Rule 29 value. Compare Exercise-01 (a simple unregistered supplier), Exercise-31 (supply through an e-commerce operator, where the platform and not the agent collects the tax) and Exercise-47 (stock transfers, where Schedule I para 2 and the distinct persons are involved).*
- ***The charged persons and the tax.*** *The agent and the unregistered principal are both charged, for two different supplies, so the tax is cumulative: tax on BBB's supply to Mr. Z at 90%, and tax on Mr. Z's supply to the dealers at 100%. The registered principal (AAA) is not charged and is shown only as a witness and as the source of the comparison. A cascade arises because neither Mr. Z (unregistered, Section 16(1)) nor BBB had registration: had both been registered, Mr. Z would have taken credit of the tax charged by BBB and the net tax would have been on the 10% margin. The consequence should be explained to the noticees at the hearing; the demand follows the law as it stands for the period of non-registration.*
- ***Fraud or non-fraud?*** *Section 74A(5)(i) is used, because the facts show the absence of concealment (complete records, reconciliations, voluntary production, a stated though mistaken view that the principal or the agent pays), and the line of Exercise-02 is followed; compare Exercise-52, where concealment justified Section 74A(5)(ii). The mistaken view is not a defence to tax, interest or the penalty of Section 74A(5)(i), but excludes the fraud penalty.*
- ***Notifications.*** *Notification No. 10/2017-Integrated Tax (exemption from registration for small suppliers of inter-State services) deals with persons liable under Section 24(i) and has no application to the intra-State supplies of an agent. The officer should check that no notification under Section 23(2) exempts the agent in the particular case; none has been found for Section 24(vii). The only exemption touching commission agents is that for services of commission agents in agricultural produce (Circular No. 57/31/2018-GST, para 9); tiles are not agricultural produce.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax is Rs.13,06,800/- for Mr. Z (and Rs.7,90,200/- for Mr. P, Rs.20,97,000/- together), so that the Deputy/Assistant Commissioner is the competent authority, whether the amounts are taken separately for Mr. Z or together.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

***

Exercise 56

Transfer of a business as a going concern to a newly formed firm that carries on under the transferor's GSTIN without registration - Section 22(3), Section 85 and Rule 41

Exercise 56: Transfer of a business as a going concern to a newly formed firm that carries on under the transferor's GSTIN without registration - Section 22(3), Section 85 and Rule 41

Situation in Brief:

1. M/s AAA, a partnership firm of Mr. A and Mr. B, with its factory at YYYY, Coimbatore, Tamil Nadu, has been registered under GST since 01.07.2017 (GSTIN 33[...]). It manufactures electrical switches and switchgear (HSN 8536, taxable at 18% - 9% central tax and 9% State tax) and files its returns monthly.

2. By a Business Transfer Agreement dated 30.06.2025, M/s AAA transferred its entire business, as a going concern, with effect from 01.07.2025, to M/s XXX, a partnership firm newly formed by Mr. Z and Mrs. Z under a partnership deed dated 14.06.2025 (PAN allotted on 18.06.2025), for a lump-sum consideration of Rs.2,10,00,000/-. The transfer covered the factory, plant and machinery, stock, trade name 'AAA Switchgear', customer contracts and the staff. Clause 9 of the Agreement states that the transferee 'assumes all liabilities of the business as appearing in the books as on 30.06.2025'. Mr. A and Mr. B retired from business on 30.06.2025.

3. M/s XXX did not apply for registration. It carried on the business from the same factory from 01.07.2025 and continued to issue tax invoices and e-invoices in the name and GSTIN of M/s AAA (the invoicing software was left unchanged). GSTR-1 and GSTR-3B for July to October 2025 were filed under the old GSTIN by Mr. Z, using the login credentials and digital signature certificate handed over by Mr. A under a letter dated 30.06.2025. No application was made for amendment of registration, for transfer of unutilised input tax credit in FORM GST ITC-02 or for cancellation of the registration of M/s AAA. The tax on the supplies made after 01.07.2025 was paid in the returns, as follows:

Month	Taxable value invoiced under old GSTIN (Rs.)	Tax @18% (Rs.)	GSTR-3B filed on
Jul-2025	80,00,000	14,40,000	20.08.2025
Aug-2025	92,00,000	16,56,000	19.09.2025
Sep-2025	96,00,000	17,28,000	20.10.2025
Oct-2025	94,00,000	16,92,000	20.11.2025
TOTAL	**3,62,00,000**	**65,16,000**	

4. A complaint dated 05.11.2025 (from a customer whose purchase department noticed a new signboard and a new bank account on the supplier's letter-head) was received in the Coimbatore CGST Commissionerate. On a verification visit on 12.11.2025, the Superintendent found the signboard 'M/s XXX (formerly AAA Switchgear)' at the factory gate. Summonses dated 13.11.2025 under Section 70 of the CGST Act, 2017 were issued to Mr. A and Mr. Z. Mr. Z and Mr. A appeared on 24.11.2025 and 25.11.2025 respectively and produced the Business Transfer Agreement, the partnership deed of M/s XXX, the hand-over letter of 30.06.2025, specimen invoices and e-invoice (IRN) records for July to October 2025, the scrap sale register of M/s AAA for April to June 2025 and the bank statements of both firms.

5. In his statement recorded on 24.11.2025 under Section 70, Mr. Z stated that M/s XXX took over the whole business with effect from 01.07.2025; that his chartered accountant had advised him by an e-mail dated 24.06.2025 that the new firm would have to obtain its own registration, but he decided to continue with the old GSTIN 'till the end of the year' because the vendor codes of two large customers were linked to the old GSTIN and a fresh registration would have delayed payments; that all invoices from 01.07.2025 were raised by M/s XXX and all sale proceeds were received in the bank account of M/s XXX; that tax on those supplies was paid in full; that he had read Clause 9 of the Agreement but had not examined the dues of the old firm; and that he would obtain registration at once.

6. In his statement recorded on 25.11.2025, Mr. A stated that the whole business, including the stock, was handed over on 30.06.2025; that he did not apply for cancellation of the registration or for transfer of the input tax credit (Rs.3,40,000/- unutilised on 30.06.2025, half in the CGST and half in the State GST

ledger) because the buyer wished to continue under the old GSTIN; that he had given the login and signature certificate to Mr. Z; that scrap (copper and aluminium) arising in the factory in April to June 2025 had been sold for cash and cheque to a scrap dealer, was entered in the stores' scrap register and in the books as 'miscellaneous income', but was not shown in the returns because his accountant had advised that scrap was a non-taxable by-product; and that the GSTR-1 for June 2025 was filed with a higher figure than the GSTR-3B by oversight. He stated that the dues, if any, would be borne by the new firm in terms of Clause 9.

7. Scrutiny of the scrap register, the dealer's cheques and the returns showed that scrap valued at Rs.8,00,000/- (taxable at 18%) was sold in April to June 2025 and was not included in GSTR-1 or GSTR-3B. Further, GSTR-1 for June 2025 shows outward taxable supplies of Rs.60,00,000/-, whereas Table 3.1(a) of GSTR-3B for June 2025 shows Rs.50,00,000/-; the tax on the difference of Rs.10,00,000/- (Rs.90,000/- each under the CGST and TNGST Acts) has not been paid. No notice or order has so far been issued to M/s AAA for these amounts. The month-wise sale of scrap is:

Month	Scrap sold (Rs.)	CGST @9% (Rs.)	TNGST @9% (Rs.)	Total tax (Rs.)
Apr-2025	2,50,000	22,500	22,500	45,000
May-2025	3,00,000	27,000	27,000	54,000
Jun-2025	2,50,000	22,500	22,500	45,000
TOTAL	**8,00,000**	**72,000**	**72,000**	**1,44,000**

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s AAA and M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s AAA and M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s AAA and M/s XXX, calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them and their partners.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s AAA and M/s XXX.

***

SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A and Section 85, and Draft Show Cause Notice - M/s AAA (transferor) and M/s XXX (transferee), Coimbatore CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Tamil Nadu Goods and Services Tax Act, 2017 [TNGST Act] and the Rules made under the two Acts). The contraventions are grouped by the person who committed them, because the whole point of the exercise is to decide who is the 'charged person' for what:

(I) By the transferee, M/s XXX

1. **Section 22(3) of the CGST Act, 2017** - a business carried on by a taxable person registered under the Act was transferred, 'whether on account of succession or otherwise', to another person 'as a going concern'; the transferee is liable to be registered **with effect from the date of the transfer**, i.e. from 01.07.2025. This is irrespective of the transferee's own turnover; no threshold under Section 22(1) is available. Section 22(3) is attracted only where the transferor was a registered person (as M/s AAA was); if the transferor was not registered, the transferee's liability has to be tested under Section 22(1).
2. **Section 25(1) of the CGST Act, 2017** - failure to apply for registration within thirty days of becoming liable, i.e. on or before 31.07.2025. The transferee cannot use the transferor's registration: a GSTIN is personal to the registered person (PAN-based) and is not transferable by agreement.
3. **Section 85(2) of the CGST Act, 2017** - a transferee who carries on the business 'either in his own name or in some other name' is liable to pay tax on the supplies effected by him with effect from the date of transfer. M/s XXX is the supplier in law of all supplies from 01.07.2025, although the invoices carry the name and GSTIN of M/s AAA.
4. **Section 31(1) read with Rule 46** - the tax invoices issued from 01.07.2025 do not carry the name, address and GSTIN of the actual supplier, M/s XXX.

(II) By the transferor, M/s AAA

5. **Section 9(1) and Sections 37(1) and 39(1)** - non-payment of tax of Rs.1,44,000/- (Rs.72,000/- each under the CGST and TNGST Acts) on the scrap sold in April to June 2025, which was not declared in GSTR-1 or GSTR-3B; and **Section 31(1)** - no tax invoice issued for the scrap.
6. **Sections 37(1), 39(1) and 59** - tax of Rs.1,80,000/- (Rs.90,000/- each) on supplies of Rs.10,00,000/- declared in GSTR-1 for June 2025, but not included in, or paid through, GSTR-3B for June 2025.
7. **Section 29(1)(a) read with Rule 20** - failure to apply for cancellation of registration although the business had been 'transferred fully'. The registration stayed alive and was used by another person.
8. **Section 122(1)(xix) / Section 122(3)(a)** - allowing, by handing over the login credentials and signature certificate, the use of its registration number on invoices issued by another person (aiding or abetting the offence at (xix)).

Note: *(a) Section 85(1) is a liability provision, not a contravention: it creates no offence, but makes the transferee answerable for the transferor's dues. (b) Rule 41 (transfer of unutilised input tax credit in FORM GST ITC-02, with the certificate of a chartered/cost accountant that the transaction contains a specific provision for transfer of liabilities) and Section 18(3) are a facility available to the transferor; non-use of the facility is not a contravention.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s AAA and M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the TNGST Act, 2017):

1. Registration - effective date and procedure - (a) **M/s XXX:** the proper officer may register it suo motu under **Section 25(8) read with Rule 16**; registration so granted is temporary, in FORM GST REG-12, and operates from the date of that order [Rule 16(2)], after which the person must apply in the normal way [Rule 16(3)]. The **liability** to register and to pay tax, however, dates from **01.07.2025** (Section 22(3),

Section 85(2)); the late grant of registration does not shorten the period of liability. (b) **M/s AAA:** cancellation under **Section 29(1)(a)** (business transferred fully) may be initiated suo motu in FORM GST REG-17; under **Section 29(3)** cancellation does not affect its liability for any period before the date of cancellation, 'whether such tax and other dues are determined before or after the date of cancellation'.

2. Determination of tax and who is liable - the tax on the scrap (Rs.1,44,000/-, for April to June 2025, i.e. FY 2025-26) is demanded under **Section 74A(1)** from M/s AAA as the person chargeable with tax, and, under **Section 85(1)**, from M/s XXX, which is 'jointly and severally' liable with the transferor for 'the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter'. The liability is 'wholly' because the entire business was transferred (on a part transfer, 'to the extent of such transfer'), and it is limited to dues up to 30.06.2025. Both firms must therefore be noticed together, so that one order can direct recovery from either. Under **Section 90** the firms and each of their partners are jointly and severally liable for the dues of a firm; the partners are therefore noticed as such. Time limit: notice within forty-two months from the due date of the annual return for FY 2025-26 (31.12.2026), i.e. up to 30.06.2030 [Section 74A(2)]; order within twelve months of the notice, extendable by six months [Section 74A(7)].

3. Self-assessed tax (June 2025) - no show cause notice - the tax of Rs.1,80,000/- on the outward supplies declared in GSTR-1 but not included in GSTR-3B is 'self-assessed tax' by virtue of the Explanation to **Section 75(12)** (inserted by the Finance Act, 2021, w.e.f. 01.01.2022) and is recoverable under **Section 79** notwithstanding Sections 73, 74 and 74A. Following CBIC Instruction No. 01/2022-GST dated 07.01.2022, a communication asking for payment or an explanation is first sent. The same amount can be recovered from M/s XXX under Section 79 by virtue of Section 85(1). The amount is therefore **not** included in the demand in the notice; it is mentioned in the notice for information (compare Exercise-15).

4. Interest - under **Section 50(1)** at 18% per annum, from the day after the due date of GSTR-3B for each month to the date of payment; illustratively up to 30.11.2026, on the tax at item 2: Rs.18,759/- each under the CGST and TNGST Acts (Rs.37,518/- in all). On the self-assessed tax at item 3, interest from 21.07.2025 up to 30.11.2026 (498 days) is Rs.22,103/- each (Rs.44,206/- in all). Interest too is a liability of the transferor 'upto the time of such transfer' (Section 85(1)).

5. Penalty on the tax demand - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.10,000/- under each Act (ten per cent of Rs.72,000/- is only Rs.7,200/-), on M/s AAA, with the transferee liable for it under Section 85(1) ('any penalty due'). Why not Section 74A(5)(ii)? The scrap was sold openly, by cheque, to a dealer; it was entered in the stores' scrap register and in the books as miscellaneous income; and the omission is explained by the accountant's advice that scrap is a non-taxable by-product. There is no evidence of intent to evade tax, only of an error of law, and the case is therefore treated as one other than fraud, wilful misstatement or suppression of facts. The concession under **Section 74A(8)** (no penalty if tax and interest are paid before the notice or within sixty days of it) is available to both firms. Section 74A(11) is not attracted to this item as the scrap tax is neither self-assessed tax nor tax collected.

6. Specific offence penalties on the transferee - **Section 122(1)(xi)** (being liable to be registered, fails to obtain registration) and **Section 122(1)(xix)** (issues an invoice or document using the registration number of another registered person), each attracting a penalty of Rs.10,000/- or the tax evaded, whichever is higher. No tax has been evaded on the post-transfer supplies (the tax was paid under the old GSTIN), so the penalty is the fixed sum of Rs.10,000/- for each clause, under each Act. As the penalty is of a stated sum, the discretion of Section 126 does not apply [Section 126(6)]. Section 122(1)(i) is not separately invoked as clause (xix) is specific to the act, and Section 122(2) does not apply to an unregistered transferee. These penalties relate to different acts from the one covered by Section 74A(5)(i), so Section 75(13) is not infringed.

7. Penalty on the transferor - **Section 122(3)(a)**, penalty which may extend to Rs.25,000/-, for aiding and abetting the offence at 122(1)(xix) by handing over its credentials. Section 126 applies because the amount is a maximum. Rs.10,000/- under each Act is proposed, having regard to the degree of the breach (no tax loss on the post-transfer supplies; the registration was deliberately kept alive for the buyer's convenience).

8. Post-transfer supplies and input tax credit - no tax demand is made on the post-transfer supplies (Rs.3,62,00,000/-): tax was paid in full under the old GSTIN. However, the credit lying in the electronic credit ledger of M/s AAA on 30.06.2025 (Rs.3,40,000/-) and the credit on purchases made after 01.07.2025 and billed to the old GSTIN were available only to the person who made the supplies and received the goods, i.e. M/s XXX, which was not registered. To the extent that such credit was utilised to pay the tax of M/s XXX, the matter is reserved for separate scrutiny; no demand is made in this notice. Rule 41 (FORM GST ITC-02, with the accountant's certificate, accepted by the transferee) was not used, and whether it can still be used after the event is left to the jurisdictional officer.

9. Recovery - under Sections 78 and 79, from M/s AAA, M/s XXX and the partners, jointly and severally (Sections 85, 90). Provisional attachment under Section 83 is not proposed: the demand is small and the factory continues in operation.

10. Alternative route (not adopted) and prosecution - separate proceedings against M/s XXX as the person chargeable with tax on its own supplies (Section 63 or Section 74A) are unnecessary as the tax was paid; they are reserved if the credit scrutiny at item 8 shows short payment. Section 132 is considered and not proposed: the tax involved is far below its monetary limits and no intention to evade tax is established.

Illustrative working of the tax and interest proposed to be demanded (scrap sold, April to June 2025):

Month	Scrap sold (Rs.)	CGST @9% (Rs.)	TNGST @9% (Rs.)	Total tax (Rs.)
Apr-2025	2,50,000	22,500	22,500	45,000
May-2025	3,00,000	27,000	27,000	54,000
Jun-2025	2,50,000	22,500	22,500	45,000
TOTAL	**8,00,000**	**72,000**	**72,000**	**1,44,000**

Month	Interest from	Days to 30.11.2026	Interest per Act (Rs.)	Interest, both Acts (Rs.)
Apr-2025	21.05.2025	559	6,203	12,406
May-2025	21.06.2025	528	7,030	14,060
Jun-2025	21.07.2025	498	5,526	11,052
TOTAL			**18,759**	**37,518**

Statement of the transferor's dues for which the transferee is answerable under Section 85(1):

Item	Route	CGST (Rs.)	TNGST (Rs.)	Total (Rs.)
Tax on scrap, Apr-Jun 2025	SCN, S.74A	72,000	72,000	1,44,000
Interest on the above, to 30.11.2026	SCN, S.50(1)	18,759	18,759	37,518
Penalty, S.74A(5)(i)	SCN	10,000	10,000	20,000
Self-assessed tax, Jun 2025	S.75(12), S.79	90,000	90,000	1,80,000
Interest on the above, to 30.11.2026	S.50(1), S.79	22,103	22,103	44,206
TOTAL		**2,12,862**	**2,12,862**	**4,25,724**

Basis: *Tax is taken at 18% (9% + 9%) on the value of scrap realised, no tax having been charged separately; cum-tax valuation may be considered at the adjudication stage. The due date of GSTR-3B is the 20th of the following month for a regular monthly filer. The last table covers only the dues of the transferor up to the transfer, for which the transferee answers under Section 85(1). The penalties under Sections 122(1)(xi), 122(1)(xix) and 122(3)(a) relate to*

acts after the transfer and are personal to the persons named; they are not included.

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, (1) M/s AAA, a partnership firm situated at YYYY, Coimbatore, GSTIN 33[...] (the transferor), through its partners Mr. A and Mr. B, and Mr. A and Mr. B in their capacity as partners under Section 90; and (2) M/s XXX, a partnership firm situated at YYYY, Coimbatore (the transferee), through its partners Mr. Z and Mrs. Z, and Mr. Z and Mrs. Z in their capacity as partners under Section 90, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [.], Coimbatore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the business of M/s AAA transferred to M/s XXX as a going concern with effect from 01.07.2025 should not be held to have made M/s XXX liable to be registered with effect from 01.07.2025 under Section 22(3) of the CGST Act, 2017/TNGST Act, 2017, and liable under Section 85(2) to pay tax on its supplies from that date, and why its failure to apply for registration within thirty days under Section 25(1) should not be held to be a contravention;

(ii) an amount of Rs.72,000/- (Central tax) and Rs.72,000/- (Tamil Nadu State tax), total Rs.1,44,000/- (Rupees One Lakh Forty-Four Thousand only), being tax not paid on scrap of the value of Rs.8,00,000/- sold during April to June 2025, as detailed in Annexure-A, should not be demanded from M/s AAA under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017, and recovered from M/s AAA and M/s XXX jointly and severally in terms of Sections 85(1) and 90;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 should not be charged and recovered on the tax at (ii) above from the due date of payment of each month till the date of payment, from them jointly and severally;

(iv) a penalty of Rs.10,000/- (Central tax) and Rs.10,000/- (State tax) should not be imposed on M/s AAA under Section 74A(5)(i) of the CGST Act, 2017/TNGST Act, 2017, and recovered from M/s AAA and M/s XXX jointly and severally under Section 85(1) (without prejudice to the benefit available under Section 74A(8));

(v) a penalty of Rs.10,000/- under each of Section 122(1)(xi) and Section 122(1)(xix) of the CGST Act, 2017 (and the same under the TNGST Act, 2017) should not be imposed on M/s XXX;

(vi) a penalty under Section 122(3)(a) of the CGST Act, 2017/TNGST Act, 2017, which may extend to Rs.25,000/-, should not be imposed on M/s AAA, proposed at Rs.10,000/- under each Act, in accordance with Section 126(2) to (4).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[.]/2026-COIMBATORE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [.], Division - [.], Coimbatore CGST Commissionerate, Tamil Nadu

Date: [.].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Tamil Nadu Goods and Services Tax Act, 2017, and Sections 85 and 90 thereof)

To,
1. M/s AAA (GSTIN 33[...]), YYYY, Coimbatore, Tamil Nadu - through its partners Mr. A and Mr. B, who are also noticed in their own capacity as partners (Section 90);
2. M/s XXX (registration not obtained), YYYY, Coimbatore, Tamil Nadu - through its partners Mr. Z and Mrs. Z, who are also noticed in their own capacity as partners (Section 90).

(hereinafter referred to as 'the transferor' and 'the transferee' respectively, and together as 'the Noticees')

WHEREAS M/s AAA, a partnership firm of Mr. A and Mr. B, registered under GST since 01.07.2017, manufactures electrical switches and switchgear (HSN 8536) at its factory at Coimbatore. By a Business Transfer Agreement dated 30.06.2025 (RUD-3), it transferred its entire business, as a going concern, with effect from 01.07.2025, to M/s XXX, a partnership of Mr. Z and Mrs. Z formed under a deed dated 14.06.2025, for Rs.2,10,00,000/-. Clause 9 of the Agreement provides that the transferee 'assumes all liabilities of the business as appearing in the books as on 30.06.2025';

2. AND WHEREAS, on a complaint dated 05.11.2025 and a verification visit on 12.11.2025 at which the signboard 'M/s XXX (formerly AAA Switchgear)' was seen (RUD-1), summonses dated 13.11.2025 under Section 70 of the CGST Act, 2017 were issued to Mr. A and Mr. Z (RUD-2). They appeared on 25.11.2025 and 24.11.2025 respectively and produced the Agreement, the partnership deed, the hand-over letter dated 30.06.2025, specimen invoices and IRN records, the scrap sale register and bank statements (RUD-3 to RUD-8);

3. AND WHEREAS Mr. Z, in his statement recorded on 24.11.2025 (RUD-4), admitted, inter alia, that M/s XXX took over the whole business on 01.07.2025; that his chartered accountant had advised him by an e-mail of 24.06.2025 that the new firm would have to obtain its own registration; that he nevertheless continued with the old GSTIN because the vendor codes of two large customers were linked to it; that all invoices from 01.07.2025 were raised by M/s XXX and the proceeds credited to its bank account; and that he had not examined the dues of the old firm;

4. AND WHEREAS Mr. A, in his statement recorded on 25.11.2025 (RUD-5), admitted, inter alia, that the whole business was handed over on 30.06.2025; that he did not apply for cancellation of the registration or for transfer of credit; that he handed over the login credentials and the signature certificate to Mr. Z by a letter dated 30.06.2025 (RUD-6); that scrap generated in April to June 2025 was sold and not shown in the returns on the advice of his accountant; and that the difference between GSTR-1 and GSTR-3B for June 2025 was an oversight;

5. AND WHEREAS the records of the common portal show that no application for registration was made by M/s XXX, and no application in FORM GST REG-14, FORM GST ITC-02 or FORM GST REG-16 was made by M/s AAA (RUD-6). From 01.07.2025 to 31.10.2025 M/s XXX issued tax invoices and e-invoices for Rs.3,62,00,000/- in the name and GSTIN of M/s AAA, and the returns for July to October 2025 were filed from the login of M/s AAA by Mr. Z (RUD-7). It appears that M/s XXX, being the transferee of a business carried on by a registered taxable person, was liable to be registered under Section 22(3) of the CGST Act, 2017 with effect from 01.07.2025, was required to apply for registration within thirty days under Section 25(1), is liable under Section 85(2) to pay tax on its supplies from 01.07.2025, and by using the registration number of M/s AAA on its invoices has contravened Section 31(1) read with Rule 46 and committed the act described in Section 122(1)(xix); and that M/s AAA, which allowed its credentials to

be so used, has aided and abetted that act within the meaning of Section 122(3)(a);

6. AND WHEREAS scrutiny of the scrap sale register, the dealer's cheques and the returns (RUD-8) shows that scrap of the value of Rs.8,00,000/- (Rs.2,50,000/- in April, Rs.3,00,000/- in May and Rs.2,50,000/- in June 2025) was sold by M/s AAA and was not included in GSTR-1 or GSTR-3B for those months. The tax payable at 18% (9% CGST + 9% TNGST) is Rs.72,000/- each under the CGST Act and the TNGST Act, total Rs.1,44,000/- (Annexure-A), which has not been paid;

7. AND WHEREAS Section 85(1) of the CGST Act, 2017 provides that where a taxable person liable to pay tax transfers his business in whole or in part, by sale, gift, lease, leave and licence, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether determined before the transfer but unpaid or determined thereafter. The business having been transferred wholly on 01.07.2025, M/s XXX appears to be jointly and severally liable with M/s AAA for the tax, interest and penalty at paragraph 6 and for the dues of M/s AAA up to 30.06.2025 generally, and the partners of both firms are liable under Section 90;

8. AND WHEREAS the scrap was sold openly, by cheque, to a dealer and was entered in the scrap register and in the books as miscellaneous income, and the omission from the returns is explained by the advice of the accountant. No evidence of fraud, wilful misstatement or suppression of facts with intent to evade tax has been found, and the non-payment appears to be a case other than fraud, wilful misstatement or suppression, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017/TNGST Act, 2017;

9. AND WHEREAS it is further noticed that GSTR-1 for June 2025 declared outward taxable supplies of Rs.60,00,000/- while GSTR-3B for June 2025 showed Rs.50,00,000/-, leaving tax of Rs.90,000/- each under the CGST and TNGST Acts unpaid (RUD-9). This is 'self-assessed tax' within the Explanation to Section 75(12) and is recoverable under Section 79 and, from M/s XXX, by virtue of Section 85(1); it is not made a subject matter of this notice, and is mentioned for the information of the Noticees. A separate communication in terms of CBIC Instruction No. 01/2022-GST dated 07.01.2022 is being issued;

10. AND WHEREAS it thus appears that the Noticees have contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the TNGST Act, 2017):

- M/s XXX: Section 22(3) and Section 25(1) - failure to obtain registration as the transferee of the business with effect from 01.07.2025; Section 85(2) - liability to pay tax on supplies from the date of transfer; Section 31(1) read with Rule 46 - invoices not carrying the particulars of the actual supplier;
- M/s AAA: Sections 9(1), 31(1), 37(1) and 39(1) - non-payment of tax and non-reporting of the sale of scrap in April to June 2025; Section 29(1)(a) read with Rule 20 - failure to apply for cancellation of registration on transfer of the business;

11. AND WHEREAS the aforesaid acts and omissions of the Noticees render them liable to:

(a) demand and recovery of tax under Section 74A of the CGST Act, 2017/TNGST Act, 2017, from M/s AAA, and jointly and severally from M/s XXX under Section 85(1);

(b) interest under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017;

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/TNGST Act, 2017;

(d) penalty on M/s XXX under Section 122(1)(xi) and Section 122(1)(xix), and on M/s AAA under Section 122(3)(a), of the CGST Act, 2017/TNGST Act, 2017;

NOW, THEREFORE

M/s AAA, through its partners Mr. A and Mr. B, and M/s XXX, through its partners Mr. Z and Mrs. Z, and the said partners in their capacity under Section 90, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [.], Coimbatore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the business of M/s AAA transferred to M/s XXX as a going concern with effect from 01.07.2025 should not be held to have made M/s XXX liable to be registered with effect from 01.07.2025 under Section 22(3) of the CGST Act, 2017/TNGST Act, 2017, and liable under Section 85(2) to pay tax on its supplies from that date, and why its failure to apply for registration within thirty days under Section 25(1) should not be held to be a contravention;

(ii) an amount of Rs.72,000/- (Central tax) and Rs.72,000/- (Tamil Nadu State tax), total Rs.1,44,000/- (Rupees One Lakh Forty-Four Thousand only), being tax not paid on scrap of the value of Rs.8,00,000/- sold during April to June 2025, as detailed in Annexure-A to this notice, should not be demanded from M/s AAA under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017, and recovered from M/s AAA and M/s XXX jointly and severally in terms of Sections 85(1) and 90;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 should not be charged and recovered on the tax at (ii) above from the due date of payment of each month till the date of payment, from them jointly and severally;

(iv) a penalty of Rs.10,000/- (Central tax) and Rs.10,000/- (State tax) should not be imposed on M/s AAA under Section 74A(5)(i) of the CGST Act, 2017/TNGST Act, 2017, and recovered from M/s AAA and M/s XXX jointly and severally under Section 85(1) (without prejudice to the benefit available under Section 74A(8));

(v) a penalty of Rs.10,000/- under each of Section 122(1)(xi) and Section 122(1)(xix) of the CGST Act, 2017 (and the same under the TNGST Act, 2017) should not be imposed on M/s XXX;

(vi) a penalty under Section 122(3)(a) of the CGST Act, 2017/TNGST Act, 2017, which may extend to Rs.25,000/-, should not be imposed on M/s AAA, proposed at Rs.10,000/- under each Act, in accordance with Section 126(2) to (4).

12. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticees (or their authorised representatives) may appear in person or through counsel; no penalty will be imposed without such an opportunity [Section 126(3)];
- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017/TNGST Act, 2017, whereby, if the tax at (ii) and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax, and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded;
- M/s XXX is called upon to apply for registration forthwith; the proper officer will otherwise proceed under Section 25(8) read with Rule 16. M/s AAA is called upon to apply for cancellation of its registration in FORM GST REG-16;
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017/TNGST Act, 2017, including recovery of the self-assessed tax mentioned at paragraph 9, scrutiny of the input tax credit availed or utilised after 01.07.2025, and any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Complaint dated 05.11.2025 and verification report dated 12.11.2025 with photographs of the signboard;

RUD-2: Summonses dated 13.11.2025 issued under Section 70 of the CGST Act, 2017 to Mr. A and Mr. Z, with proof of service;

RUD-3: Business Transfer Agreement dated 30.06.2025, partnership deed of M/s XXX dated 14.06.2025 and PAN of M/s XXX;

RUD-4: Statement of Mr. Z recorded under Section 70 on 24.11.2025, with the e-mail dated 24.06.2025 of his chartered accountant;

RUD-5: Statement of Mr. A recorded under Section 70 on 25.11.2025;

RUD-6: Hand-over letter dated 30.06.2025 (login credentials and signature certificate) and extract from the common portal showing no application in FORM GST REG-14, ITC-02 or REG-16 and no registration of M/s XXX;

RUD-7: Specimen invoices, e-invoice (IRN) records and GSTR-1 and GSTR-3B for July to October 2025 of GSTIN 33[...];

RUD-8: Scrap sale register for April to June 2025, the scrap dealer's cheques and the bank statement of M/s AAA;

RUD-9: GSTR-1 and GSTR-3B of M/s AAA for April to June 2025;

Annexure-A: Month-wise statement of scrap sold, tax and interest [as per the working in Part B].

(_____)
Superintendent, CGST
Range - [.], Division - [.], Coimbatore CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Coimbatore, for information.

Drafting note (not part of the notice):

- *The names, addresses, GSTIN, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The complaint, the visit and the e-mail of the accountant are fictional facts, created only for the exercise.*
- ***Teaching point - who is the charged person?** The exercise separates three questions that are often mixed up. (1) Liability to register: it lies on the transferee alone, from the date of the transfer (Section 22(3)), whatever the transferee's turnover; the transferor's registration is not transferable. (2) Liability for tax: tax on supplies up to the transfer is the transferor's (the 'person chargeable with tax'), and Section 85(1) adds the transferee as a jointly and severally liable person - a derivative liability, which is why the transferee is joined in the notice but the demand is framed on the transferor; tax on supplies after the transfer is the transferee's own (Section 85(2)), even when the invoices carry the old GSTIN. (3) Penalty: each person is penalised for his own act - the transferee for non-registration and misuse of the GSTIN (122(1)(xi) and (xix)), the transferor for abetment (122(3)(a)) and for the scrap tax (74A(5)(i)), the latter being recoverable from the transferee as 'any penalty due' under Section 85(1). Compare Exercise-45 (closure, Section 29(5)) and Exercise-51 (splitting of business), where the question is not who answers for another's dues.*
- ***Effective date.** The liability to register and to pay tax runs from 01.07.2025 (date of transfer), not from the date of the officer's registration order. Suo motu registration under Section 25(8) and Rule 16 is temporary and prospective, but this does not shorten the liability period.*
- ***Route choice - SCN or recovery?** Not everything goes into the notice. Tax omitted from the returns altogether (scrap) needs a Section 74A notice. Tax declared in GSTR-1 but not carried to GSTR-3B is 'self-assessed tax' (Explanation to Section 75(12)) and is recovered under Section 79 after the communication prescribed by Instruction No. 01/2022-GST. Section 85(1) can be used for both: it supplies the person from whom recovery can be made, not the procedure. Penalty under Section 74A(5)(i), not Section 74A(5)(ii), is proposed because the facts show an open, recorded transaction and an error of law (see Exercise-02); the notice would be altered if the scrap register were found to be a parallel record meant to hide sales (see Exercise-14).*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner:*

above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.72,000/-, within the Superintendent's limit.

- ***Points to examine before issue.*** *(a) Whether the credit of Rs.3,40,000/- and the credit on later purchases billed to the old GSTIN was utilised by the transferee (item B-8); if so, a supplementary notice may follow. (b) Whether a penalty is to be considered on the self-assessed tax under Section 74A(11) read with Section 74A(5)(i).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

***

Exercise 57

Failure to apply for amendment of registration for an additional place of business (no tax effect) - Section 28 read with Rule 19, Section 125 and Section 126

Exercise 57: Failure to apply for amendment of registration for an additional place of business (no tax effect) - Section 28 read with Rule 19, Section 125 and Section 126

Situation in Brief:

1. M/s XXX, proprietor Mr. Z, of YYYY, Hubballi, Karnataka, has been registered under GST since 15.03.2019 (GSTIN 29[...]) as a wholesale trader in industrial fasteners and hardware (taxable at 18% - 9% central tax and 9% State tax). The certificate of registration shows the principal place of business at Hubballi and one additional place of business, a godown at Gokul Road, Hubballi. The proprietor files GSTR-1 and GSTR-3B monthly and has no outstanding dues.

2. By a rent agreement dated 28.07.2025, Mr. Z took on rent, at Rs.45,000/- per month, a godown at Plot No. 14, YYYY Industrial Estate, Dharwad, Karnataka, with effect from 01.08.2025. The landlord is an unregistered individual. From that date, goods were stored at the Dharwad godown and delivered to customers in Dharwad, Belagavi and Haveri districts, all within Karnataka. The invoices were issued under the registered GSTIN, and the e-way bills for consignments above Rs.50,000/- show the Dharwad address in the 'Dispatch From' field. No application was made for amendment of the registration to add the Dharwad godown.

3. Scrutiny of e-way bill data showed dispatches from an address not appearing in the registration of Mr. Z. On 09.01.2026 the Joint Commissioner of Central Tax, Belagavi, authorised the Superintendent in writing, under Section 71(1) of the CGST Act, 2017, to inspect the business premises of the registered person for verification. On 14.01.2026 the Superintendent visited the Dharwad godown in the presence of Mr. Z's godown-keeper, inspected the stock, the stock register, delivery challans and the computer in the godown office, and prepared an inspection report with photographs. Nothing was seized and no search was made.

4. Physical verification showed stock valued at cost at Rs.41,60,000/-, which tallied with the stock register of the godown and with the books maintained at Hubballi, in which the stock is carried under the head 'Godown-2, Dharwad'. There was no excess or shortage of stock. A summons dated 15.01.2026 under Section 70 was issued to Mr. Z, who appeared on 22.01.2026.

5. In his statement recorded on 22.01.2026, Mr. Z stated that he took the Dharwad godown in July 2025 to hold festival-season stock closer to customers; that he regarded it as 'temporary' and meant to report it 'with the next update'; that his accountant had told him in August 2025 that the godown must be added to the registration, but he did not act on it; that all sales from the godown were invoiced under his GSTIN and the tax was paid in the returns; that books and stock records of the godown were kept; and that he would apply for amendment at once.

6. By a letter dated 28.01.2026 the Range officer advised Mr. Z to apply in FORM GST REG-14 within fifteen days, and sent a reminder on 05.03.2026. Mr. Z filed FORM GST REG-14 on 06.04.2026; the amendment was approved in FORM GST REG-15 on 20.04.2026 and took effect from 06.04.2026. The Commissioner has not been asked to allow an earlier date.

7. Reconciliation completed on 15.10.2026 of the invoices dispatched from the Dharwad godown (e-way bills, invoice register), GSTR-1 and GSTR-3B for August to December 2025 showed that every invoice was reported in GSTR-1, that the tax of Rs.23,58,000/- was paid in the returns, and that there is no difference. The month-wise position is:

Month	Invoices dispatched from Dharwad godown (Rs.)	Reported in GSTR-1 (Rs.)	Tax @18% paid (Rs.)	Difference
Aug-2025	22,00,000	22,00,000	3,96,000	Nil
Sep-2025	26,50,000	26,50,000	4,77,000	Nil
Oct-2025	24,00,000	24,00,000	4,32,000	Nil
Nov-2025	30,50,000	30,50,000	5,49,000	Nil
Dec-2025	28,00,000	28,00,000	5,04,000	Nil
TOTAL	**1,31,00,000**	**1,31,00,000**	**23,58,000**	**Nil**

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions), and decide whether any tax is to be demanded and which penalty provision is correct.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Inspection under Section 71, Inquiry on summons, Penalty-only Show Cause Notice under Section 125 read with Section 126 - M/s XXX, Prop. Mr. Z, Belagavi CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provision of law stands contravened (read with the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017 [KGST Act] and the Rules made under the two Acts):

1. **Section 28(1) of the CGST Act, 2017 read with Rule 19(1) of the CGST Rules, 2017** - every registered person must inform the proper officer of any change in the information furnished at the time of registration or subsequently, and Rule 19(1) requires the application for amendment in FORM GST REG-14 to be made within **fifteen days** of the change. The change here was the acquisition of an additional place of business on 01.08.2025; the application was due on or before 16.08.2025 and was made on 06.04.2026, i.e. 233 days late. The godown is a 'place of business' (a godown or warehouse where goods are stored is one), whether or not it is declared.

What is NOT contravened: *(a)* ***Section 25 and Rule 8*** *govern the application for registration, where the principal and additional places of business are declared. The declaration made in 2019 was true on that date, so there is no contravention of Section 25 or Rule 8 and no false information was furnished; the continuing duty to report later changes lies under Section 28 and Rule 19, which is where the case belongs. (b) No separate registration was needed for the Dharwad godown: it is in the same State, and a person has one registration in a State, with additional places of business declared under it. A place of business in another State would have required a separate registration (Section 22(1), Section 25(1)). (c)* ***Rule 18*** *(display of the certificate and of the GSTIN on the name-board of every place of business) is a separate rule dealt with in Exercise-50, and is not charged here. (d) There is no contravention of Sections 31, 37 or 39: all supplies were invoiced and reported, and no contravention of the provisions on keeping of accounts is alleged, as the godown stock was recorded in the books.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contravention at (A) above exposes M/s XXX/Mr. Z to the following under the CGST Act, 2017 (read with the corresponding provisions of the KGST Act, 2017):

1. Tax, interest - none to be demanded - a notice under Section 74A (or Section 73/74) is issued only where tax has not been paid or short paid, or credit has been wrongly availed or utilised [Section 74A(1)]. Here the reconciliation at paragraph 7 of the Situation shows invoices of Rs.1,31,00,000/- from the godown, all reported in GSTR-1, with tax of Rs.23,58,000/- paid. There is no tax effect. To demand tax merely because the supplies were made from an undeclared place would be to charge the same tax twice, or to charge tax where none is due. Interest under Section 50 and late fee under Section 47 do not arise. The notice is therefore a **penalty-only notice** (compare Exercise-50).

2. Which penalty? Section 122(1)(xii) or Section 125 - the Master Chart (Template I, parts B and C, and the Summary) invokes Section 122(1)(xii) for failure to get registration amended. On a reading of the clause this does not fit a bare failure to amend. Clause (xii) applies to a person who 'furnishes false information with regard to registration particulars, either at the time of applying for registration, or subsequently'. The offence is the **furnishing** of false information (for example, an application that states that there is no other place of business when there is one, or an amendment application, return or other document giving a wrong address); keeping quiet about a change is an omission, not the furnishing of anything. No false information was furnished by Mr. Z: his 2019 declaration was true, and his REG-14 of 06.04.2026 is accurate. The omission is a contravention of a provision of the Act and the Rules (Section 28(1), Rule 19(1)) 'for which no penalty is separately provided for in this Act', which is the residual penalty of **Section 125**, 'which may extend to twenty-five thousand rupees'. Clause (xii) would apply only if false information were actually shown, e.g. if Mr. Z had told the officer on 14.01.2026 that the godown belonged to a relative, or had shown a different address in the REG-14.

3. Why the choice matters - the penalty under Section 122(1) is a stated sum (Rs.10,000/-, or the tax evaded if higher). Section 126(6) excludes from the discipline of Section 126 every penalty that 'is either

a fixed sum or expressed as a fixed percentage'. Charged under clause (xii), a penalty of Rs.10,000/- would therefore be imposed without the benefit of proportionality. Section 125, being a maximum of Rs.25,000/-, is not a fixed sum, and Section 126 applies in full. The right provision is therefore also the one that allows the officer to do justice to a no-tax-effect case.

4. Section 126 applied - (a) **Section 126(1) and its Explanation** bar any penalty for 'minor breaches of tax regulations or procedural requirements', and a breach is a 'minor breach' if 'the amount of tax involved is less than five thousand rupees'. Two readings are possible. If 'tax involved' means tax evaded or short paid because of the breach, it is nil and the breach is a minor one, so that no penalty may be imposed at all. If it means the tax on the supplies to which the breach relates (Rs.23,58,000/-), the test is not met. The notice is drafted on the second reading, because the breach is not a clerical slip: a place of business holding stock of Rs.41,60,000/- was operated for more than eight months, the proprietor had been told by his accountant in August 2025 to declare it, and two written communications (28.01.2026 and 05.03.2026) were needed before the amendment was applied for. The first reading remains open to the Noticee in his reply, and the adjudicating officer must decide between the two after hearing him; if he accepts the first, the proceedings are to be dropped with an advisory. (b) **Section 126(2)**: the penalty must depend on the facts of the case and be commensurate with the degree and severity of the breach. Because no tax is lost, the books and stock records were complete, all supplies were invoiced, and the amendment has now been made, the penalty proposed is at the lower end: Rs.5,000/- under the CGST Act and Rs.5,000/- under the KGST Act (one fifth of the ceiling under each). (c) **Section 126(3)**: no penalty without a hearing; the notice affords it. (d) **Section 126(4)**: the order must state the nature of the breach and the provision under which the penalty is imposed; the notice therefore specifies Section 28(1) read with Rule 19(1) and Section 125. (e) **Section 126(5)**: the mitigating effect of voluntary disclosure is not available, because the godown was discovered by the department and not disclosed by the Noticee.

5. Rectification - the opportunity given - Rule 19 offers the Noticee the means to put the record right, and the department has given it: the amendment is made by REG-14, which for an additional place of business is approved by the proper officer after verification within fifteen working days [clause (a) of the proviso to Rule 19(1)]. The amendment cannot operate from a date earlier than the date of application unless the Commissioner so orders in writing with reasons [Rule 19(1A)]; none was sought, so the godown stood outside the registration from 01.08.2025 to 05.04.2026. Rectification does not wipe out the breach, but is a factor under Section 126(2); had the application been made within the fifteen days of the advisory of 28.01.2026, no notice would have been proposed.

6. Other action considered and not proposed - (a) Search and seizure under Section 67 requires reasons to believe and is unwarranted. Section 71 is an inspection power: it permits access to the place of business of a registered person to inspect books, documents, computers and other things for audit, scrutiny, verification and checks to safeguard the interest of revenue, on the authorisation of an officer not below the rank of Joint Commissioner; the statement was recorded separately under Section 70. (b) Cancellation of registration is not warranted. (c) Section 122(1)(xv) (suppression of turnover) and 122(1)(xvi) (failure to keep accounts) have no factual basis. (d) Prosecution under Section 132 does not arise.

7. Limitation - the Act prescribes no time limit for a penalty notice under Section 125 (Annexure A of the Chart records none for standalone penalty proceedings). The notice should nevertheless be issued within a reasonable time, and it is issued within about ten months of the inspection.

Illustrative working - the supplies from the Dharwad godown, and the penalty proposed:

Month	Invoices from Dharwad godown (Rs.)	Reported in GSTR-1 (Rs.)	Tax @18% paid (Rs.)	Short payment
Aug-2025	22,00,000	22,00,000	3,96,000	Nil
Sep-2025	26,50,000	26,50,000	4,77,000	Nil
Oct-2025	24,00,000	24,00,000	4,32,000	Nil
Nov-2025	30,50,000	30,50,000	5,49,000	Nil

Month	Invoices from Dharwad godown (Rs.)	Reported in GSTR-1 (Rs.)	Tax @18% paid (Rs.)	Short payment
Dec-2025	28,00,000	28,00,000	5,04,000	Nil
TOTAL	**1,31,00,000**	**1,31,00,000**	**23,58,000**	**Nil**

Item	Provision	Maximum (Rs.)	Proposed (Rs.)
Penalty under the CGST Act	S.125 and S.126(2)	25,000	5,000
Penalty under the KGST Act	S.125 and S.126(2)	25,000	5,000
Tax, interest, late fee	-	-	Nil

Basis: *The period of default is counted from 16.08.2025 (the fifteenth day from 01.08.2025) to 06.04.2026, the date of the REG-14 application (233 days). The amounts of tax are those reported and paid in the returns, not a demand.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Hubballi, Karnataka, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [.], Belagavi CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the failure to inform the proper officer, within fifteen days of 01.08.2025, of the additional place of business at Plot No. 14, YYYY Industrial Estate, Dharwad, by applying in FORM GST REG-14, until 06.04.2026, should not be held to be a contravention of Section 28(1) of the CGST Act, 2017/KGST Act, 2017 read with Rule 19(1) of the CGST Rules, 2017/KGST Rules, 2017;

(ii) a penalty of Rs.5,000/- (Central tax) and Rs.5,000/- (Karnataka State tax), total Rs.10,000/-, being within the maximum of Rs.25,000/- under each Act, should not be imposed on them under Section 125 of the CGST Act, 2017/KGST Act, 2017, having regard to the matters in Section 126(1) to (5) of the CGST Act, 2017;

It is clarified that no tax, interest or late fee is demanded in this notice, all supplies from the said place having been invoiced, reported in the returns and taxed.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[.]/2026-BELAGAVI

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [.], Division - [.], Belagavi CGST Commissionerate, Karnataka

Date: [.].11.2026

SHOW CAUSE NOTICE

(Issued for imposition of penalty under Section 125 of the Central Goods and Services Tax Act, 2017 read with Section 125 of the Karnataka Goods and Services Tax Act, 2017, and Section 126 thereof - no demand of tax)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN 29[...]),
YYYY, Hubballi, Karnataka.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS the Noticee is registered under the CGST Act, 2017 and the KGST Act, 2017 (GSTIN 29[...]) as a wholesale trader in industrial fasteners and hardware, with the principal place of business at Hubballi and one declared additional place of business, a godown at Gokul Road, Hubballi;

2. AND WHEREAS the Noticee took on rent, by an agreement dated 28.07.2025 (RUD-3), a godown at Plot No. 14, YYYY Industrial Estate, Dharwad, with effect from 01.08.2025, stored goods there and delivered goods from there to customers within Karnataka, the e-way bills showing the Dharwad address as the place of dispatch (RUD-4). The said godown is a place of business within the meaning of Section 2(85) of the CGST Act, 2017;

3. AND WHEREAS, on the written authorisation dated 09.01.2026 of the Joint Commissioner of Central Tax, Belagavi, under Section 71(1) of the CGST Act, 2017 (RUD-1), the Superintendent inspected the godown on 14.01.2026 and prepared an inspection report with photographs and a stock verification statement (RUD-2). The stock was valued at Rs.41,60,000/- and tallied with the stock register and the books of the Noticee; no goods or documents were seized;

4. AND WHEREAS, in his statement recorded on 22.01.2026 under Section 70 of the CGST Act, 2017 (RUD-5), the Noticee admitted that he took the godown in July 2025; that his accountant told him in August 2025 that it must be added to the registration, but he did not act on it as he regarded the godown as temporary; that all sales from it were invoiced under his GSTIN and the tax paid in the returns; and that he would apply for amendment of registration;

5. AND WHEREAS the Range officer, by letters dated 28.01.2026 and 05.03.2026, advised the Noticee to apply for amendment in FORM GST REG-14 (RUD-6). The Noticee applied on 06.04.2026 and the amendment, approved on 20.04.2026, took effect from 06.04.2026 (RUD-7);

6. AND WHEREAS it appears that, under Section 28(1) of the CGST Act, 2017 read with Rule 19(1) of the CGST Rules, 2017, the Noticee was required to inform the proper officer of the change in the particulars of registration, namely the additional place of business, by applying in FORM GST REG-14 within fifteen days of the change, i.e. on or before 16.08.2025, but did so only on 06.04.2026, after a delay of 233 days, and that the Dharwad godown remained undeclared in the registration from 01.08.2025 till 05.04.2026;

7. AND WHEREAS reconciliation of the invoices dispatched from the Dharwad godown, GSTR-1 and GSTR-3B for August to December 2025 (RUD-8; Annexure-A) shows that every invoice (Rs.1,31,00,000/-) was reported and the tax (Rs.23,58,000/-) paid, so that **there is no loss of revenue and no tax, interest or late fee is demanded by this notice**. The Noticee has not furnished any false information regarding the

particulars of registration, and Section 122(1)(xii) is therefore not invoked;

8. AND WHEREAS no penalty is separately provided in the Act for the contravention of Section 28(1) read with Rule 19(1), and it therefore appears that the Noticee is liable to a penalty under Section 125 of the CGST Act, 2017/KGST Act, 2017, which may extend to Rs.25,000/-. In terms of Section 126, the penalty is to be commensurate with the facts and the degree and severity of the breach [Section 126(2)], the nature of the breach and the provision under which it is penalised are as stated in this notice [Section 126(4)], and no penalty can be imposed without a hearing [Section 126(3)]. Having regard to the absence of tax effect, the maintenance of records, the rectification made, and also the continuance of the default for more than eight months in spite of the advice of the accountant and two communications of the department, a penalty of Rs.5,000/- under each Act is proposed. The Noticee may contend that the breach is a 'minor breach' within the Explanation to Section 126(1), and the point will be decided after hearing him;

9. AND WHEREAS the voluntary disclosure of a breach before its discovery is a mitigating factor under Section 126(5); in the present case, the godown was discovered by the department;

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Hubballi, Karnataka, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [.], Belagavi CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the failure to inform the proper officer, within fifteen days of 01.08.2025, of the additional place of business at Plot No. 14, YYYY Industrial Estate, Dharwad, by applying in FORM GST REG-14, until 06.04.2026, should not be held to be a contravention of Section 28(1) of the CGST Act, 2017/KGST Act, 2017 read with Rule 19(1) of the CGST Rules, 2017/KGST Rules, 2017;

(ii) a penalty of Rs.5,000/- (Central tax) and Rs.5,000/- (Karnataka State tax), total Rs.10,000/-, being within the maximum of Rs.25,000/- under each Act, should not be imposed on them under Section 125 of the CGST Act, 2017/KGST Act, 2017, having regard to the matters in Section 126(1) to (5) of the CGST Act, 2017;

It is clarified that no tax, interest or late fee is demanded in this notice, all supplies from the said place having been invoiced, reported in the returns and taxed.

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- the Noticee is at liberty to contend, in his reply, that the breach is a minor breach, that no penalty should be imposed under Section 126(1), or that a lesser penalty be imposed under Section 126(2);
- the Noticee should keep the particulars of registration of every place of business up to date and should display the certificate of registration and the GSTIN at every place of business as required by Rule 18;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/KGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Authorisation dated 09.01.2026 of the Joint Commissioner of Central Tax, Belagavi, under Section 71(1) of the CGST Act, 2017;

RUD-2: Inspection report dated 14.01.2026 with photographs, and stock verification statement of the

Dharwad godown;

RUD-3: Rent agreement dated 28.07.2025 and rent receipts for the Dharwad godown;

RUD-4: E-way bill extract for August to December 2025 showing the Dharwad address as the place of dispatch;

RUD-5: Summons dated 15.01.2026 under Section 70 and statement of Mr. Z recorded on 22.01.2026;

RUD-6: Letters dated 28.01.2026 and 05.03.2026 of the Range officer;

RUD-7: Application in FORM GST REG-14 dated 06.04.2026 and order in FORM GST REG-15 dated 20.04.2026;

RUD-8: Invoice register, GSTR-1 and GSTR-3B for August to December 2025 and the reconciliation statement dated 15.10.2026;

Annexure-A: Month-wise reconciliation of invoices from the Dharwad godown, GSTR-1 and tax paid [as per the table in the Situation].

(_____)
Superintendent, CGST
Range - [.], Division - [.], Belagavi CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Dharwad, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Teaching point - when not to demand tax.** This is a case of a registration-particulars default with no tax effect. The first discipline is to ask what the contravention has cost the revenue. Here, nothing: every invoice was reported and taxed. A demand under Section 74A would be misconceived, and the notice is limited to a penalty under Section 125, with Section 126 applied (the four 'C's are still required: Contravention - Section 28(1) with Rule 19(1); Consequence - Section 125 and Section 126, not Section 122(1)(xii); Charged person - Mr. Z, as one with M/s XXX; Charging paragraph - penalty only; and Evidence - inspection report, e-way bills, rent agreement, statement, and the reconciliation that proves the absence of a tax effect). Compare Exercise-50 (non-display of the certificate under Rule 18, another no-tax notice) and Exercise-02 (registration default with tax, where Section 74A applies).*
- ***Section 122(1)(xii) or Section 125?** The Master Chart attributes failure to amend registration to Section 122(1)(xii). The wording of the clause ('furnishes false information with regard to registration particulars, either at the time of applying for registration, or subsequently') requires a positive furnishing of false information; a mere omission is not that. The residual penalty of Section 125 is the correct provision for failure to apply for amendment under Rule 19, and is the one on which Section 126 operates, since Section 126(6) excludes fixed-sum penalties such as Section 122(1). If the Noticee had given a false address or denied the godown to the inspecting officer, clause (xii) and clause (xvii) (false information on being called for) would have to be considered.*
- ***Should the notice be issued at all?** Before issue, the officer should ask: (a) Has the Noticee already rectified? (b) Was there any concealment or tax effect? (c) Is 'tax involved' of Section 126(1) read as tax evaded (then the breach is minor and no penalty may be imposed) or as tax on the supplies concerned? (d) Was an advisory ignored? In many cases the correct course is an advisory letter and closure of the matter. This notice is drafted for the case where the advisory was ignored for months; the Explanation to Section 126(1) leaves the first reading open and the notice says so expressly.*
- ***Rectification.** The Noticee may apply in FORM GST REG-14 under Rule 19(1) within fifteen days of the change. The amendment of an additional place of business is approved by the proper officer within fifteen working days, and cannot be given an earlier effective date except by a written order of the Commissioner [Rule 19(1A)].*

- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01 summary), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). The limits are tied to the amount of tax; as there is no tax in this notice, the lowest rank, the Superintendent, issues it.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 58

Failure to furnish GSTR-3B/GSTR-1 for six months despite notice under Section 46 - Sections 37, 39, 46, 47, 62, 74A and 29(2)(c)

Exercise 58: Failure to furnish GSTR-3B/GSTR-1 for six months despite notice under Section 46 - Sections 37, 39, 46, 47, 62, 74A and 29(2)(c)

Situation in Brief:

1. M/s XXX, proprietor Mr. Z, of YYYY, Rajkot, Gujarat (GSTIN 24[...]), registered since 2018, trades in and manufactures industrial fasteners - nuts, bolts and washers (HSN 7318, taxable at 18% - 9% central tax and 9% State tax). It is a regular monthly filer (not under the QRMP scheme), and its aggregate turnover in FY 2024-25 was Rs.2,10,00,000/-.

2. The common portal shows that GSTR-3B for the tax periods April 2025 to September 2025 (six consecutive months, due on 20.05.2025 to 20.10.2025) was not furnished. GSTR-1 was furnished for April 2025 only (on 11.05.2025) and was not furnished for May to September 2025. System-generated notices in FORM GSTR-3A under Section 46 were issued to the registered e-mail and mobile number of Mr. Z on 02.06.2025, 02.07.2025, 02.08.2025, 02.09.2025, 03.10.2025 and 03.11.2025, for the tax periods April to September 2025 respectively, each requiring the return within fifteen days. No return was furnished in response. A reminder letter dated 10.12.2025 from the Range office was also not answered. GSTR-3B for October 2025 onwards has since been furnished, late.

3. A summons dated 05.01.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared on 19.01.2026 and produced (a) the sale invoice books for April to September 2025 (all invoices carry GSTIN and tax at 18%), (b) the purchase register, (c) the statement of his current account for April to September 2025 and (d) e-way bill records. Buyers registered under GST had confirmed in writing that they paid tax with the price. E-way bill data for consignments above Rs.50,000/- (taxable value Rs.61,30,000/- for May to September 2025) agree with the invoices. The bank credits from customers correspond to the invoice value plus tax.

4. In his statement recorded on 19.01.2026 under Section 70, Mr. Z stated that his accountant left in April 2025; that cash flow was affected by delayed payments from a large customer; that he issued tax invoices throughout, collected tax from the buyers, and used the money to pay wages and suppliers; that he saw the notices on the portal but 'thought he would file everything together once cash improved'; that he did not hide any sale; and that he was willing to file all the returns and to pay the tax, interest and late fee.

5. Scrutiny showed that the taxable value of the invoices for April 2025 is Rs.14,00,000/-, equal to the figure in GSTR-1 for April 2025 and that for May to September 2025 the invoices total Rs.86,50,000/-, none of which has been reported in any return. The input tax credit available to Mr. Z for the period according to GSTR-2B was not availed, as no return was filed. The month-wise position is:

Month	Invoices, taxable value (Rs.)	Bank credits incl. tax (Rs.)	GSTR-1	GSTR-3B
Apr-2025	14,00,000	16,52,000	Filed 11.05.2025	Not filed
May-2025	16,00,000	18,88,000	Not filed	Not filed
Jun-2025	15,50,000	18,29,000	Not filed	Not filed
Jul-2025	18,00,000	21,24,000	Not filed	Not filed
Aug-2025	19,50,000	23,01,000	Not filed	Not filed
Sep-2025	17,50,000	20,65,000	Not filed	Not filed
May-Sep TOTAL	**86,50,000**	**1,02,07,000**		

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions), and decide whether the proper course is an assessment under Section 62 or a notice under Section 74A.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Inquiry on summons, Choice between Section 62 and Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Rajkot CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017 [GGST Act] and the Rules made under the two Acts):

1. **Section 39(1) of the CGST Act, 2017 read with Rules 61 and 61A** - failure to furnish the return in FORM GSTR-3B, with payment of the tax, by the 20th of the month following, for the six tax periods April to September 2025, even after notices under Section 46.
2. **Section 37(1) read with Rule 59** - failure to furnish the details of outward supplies in FORM GSTR-1 by the 11th of the following month for May to September 2025 (April 2025 was furnished).
3. **Section 9(1) read with Section 39(1)** - non-payment of tax of Rs.15,57,000/- (Rs.7,78,500/- each under the CGST and GGST Acts) at 18% on supplies of Rs.86,50,000/- made in May to September 2025, as detailed in the working below; and, as to April 2025, non-payment of Rs.2,52,000/- (Rs.1,26,000/- each) declared in GSTR-1.
4. **Section 46 and Rule 68** - the notice in FORM GSTR-3A was not complied with within fifteen days. This is not a separate offence with its own penalty; it is the condition for the assessment under Section 62 and a circumstance in assessing the conduct of the Noticee.

Note: *(a) Late fee under Section 47 is the statutory consequence of the delay and is not a contravention to be alleged. (b) The tax shown in the invoices was collected from the buyers; this attracts Section 76 and Section 122(1)(iii), but these are not charged separately (see B-8 and B-6). (c) Section 29(2)(c) (non-furnishing of returns for a continuous period of six months) is a ground for cancellation, not a contravention. (d) This is not a case of difference between GSTR-1 and GSTR-3B of a filer (Exercise-15), nor a case where the only issue is the collection and non-payment of tax (Exercise-33): returns are missing.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the GGST Act, 2017):

1. Sequence of notices - (a) FORM GSTR-3A under **Section 46** (system-generated, fifteen days to file); (b) if the return is still not filed, either (i) assessment to the best of judgment under **Section 62**, or (ii) notice under **Section 74A** with a show cause notice; (c) for tax already declared in GSTR-1, recovery under **Section 75(12)** and **Section 79**; (d) in parallel, automatic late fee under **Section 47**, interest under **Section 50**, and, if the default continues, cancellation under **Section 29(2)(c)**. Items (a) and (d) are consequences of the default whichever route is chosen.
2. Route (a) - assessment under Section 62 (not adopted) - Section 62(1) provides that, 'notwithstanding anything to the contrary contained in section 73 or section 74 or section 74A' (the last words inserted w.e.f. 01.11.2024), where a registered person fails to furnish the return under Section 39 even after service of a notice under Section 46, the proper officer may assess the tax liability to the best of his judgment, taking into account all relevant material, and issue an assessment order within five years from the due date of the annual return for the financial year to which the tax relates (for FY 2025-26, up to 31.12.2031). The order is in FORM GST ASMT-13 with a summary in FORM GST DRC-07 [Rule 100(1)]; there is no separate show cause notice in the scheme of the section, and the Master Chart's Annexure A says the same ('not a fresh SCN - the assessment order itself is the action'). Under **Section 62(2)**, if the Noticee furnishes a valid return within **sixty days** of the service of the order, the order is deemed to be withdrawn, and the proviso (inserted w.e.f. 01.10.2023) allows a further sixty days on payment of an additional late fee of Rs.100/- per day beyond sixty days; interest under Section 50(1) and late fee under Section 47 continue in either case. Before 01.10.2023 the period was thirty days. A Section 62 order carries no penalty, and the assessment is wiped out when the return is filed.

3. Route (b) - demand under Section 74A (adopted) - the notice is issued for the tax of May to September 2025 under **Section 74A(1)** (FY 2025-26 being covered by Section 74A [Section 74A(12)]), within forty-two months from the due date of the annual return, i.e. up to 30.06.2030 [Section 74A(2)]; the order is to be passed within twelve months, extendable by six months [Section 74A(7)]. The reasons for preferring this route to Section 62 are: (i) the supplies are not a matter for 'best judgment' but are established by the invoices, e-way bill data, bank credits and the buyers' confirmations; (ii) a penalty can be proposed and adjudicated in the same proceeding, whereas a Section 62 order cannot impose one; (iii) a Section 62 order would fall as soon as the Noticee furnished the returns, leaving only a recovery for self-assessed tax and no determination of penalty; and (iv) the Noticee is entitled to a full hearing. Section 62 would be the better course where the material is thin, the taxpayer is untraceable or speed matters more than penalty.

4. Can Sections 62 and 74A both be used for the same period? - Section 62(1) opens with a non-obstante clause over Sections 73, 74 and 74A, so a Section 62 order may be made even though Section 74A would otherwise apply. The Act does not in terms say that a pending Section 74A notice bars a Section 62 order or the reverse. But one tax liability for one tax period cannot be determined twice, and a second determination would be open to challenge as a duplication. The discipline to follow is: choose one route for each tax period, record the choice on the file, and do not make a Section 62 order for any period in respect of which a Section 74A notice is pending, or issue a notice under Section 74A for a period in respect of which a Section 62 order stands. Different periods may take different routes, as in this exercise (April 2025 by Section 79; May to September 2025 by Section 74A). The notice records that no Section 62 order is proposed for the said periods.

5. Tax declared in GSTR-1 (April 2025) - no notice - the tax of Rs.2,52,000/- (Rs.1,26,000/- each) shown in GSTR-1 for April 2025 is 'self-assessed tax' by the Explanation to **Section 75(12)** (the tax payable in respect of details of outward supplies furnished under Section 37 but not included in the return under Section 39), and is recovered under **Section 79**, after the communication required by CBIC Instruction No. 01/2022-GST dated 07.01.2022. Interest on it from 21.05.2025 to 30.11.2026 (559 days) is Rs.34,735/- each. It is therefore left out of the notice and is mentioned for information.

6. Interest - under **Section 50(1)** at 18% per annum from the day after the due date of GSTR-3B of each month till payment. Illustratively, up to 30.11.2026, on the tax of May to September 2025 it is Rs.1,78,334/- each (Rs.3,56,668/- in all). Since the full output tax is demanded without credit (no return having been filed, no input tax credit has been taken, and credit can be taken only through a return), the interest will be recomputed on the net cash liability when the returns are furnished, as Section 50(1) charges interest on that portion of tax which is paid by debiting the electronic cash ledger.

7. Late fee (Section 47) - not a part of the notice - the late fee is levied by the system on the common portal when the return is furnished; no notice or adjudication is required and an adjudicating officer has no power to levy or waive it. By Section 47(1) it is Rs.100/- per day (Rs.100/- under each Act) subject to a maximum of Rs.5,000/-; but the notified rate is Rs.25/- per day under each Act (Rs.10/- for nil returns), with a cap under each Act of Rs.2,500/- for a person whose aggregate turnover in the preceding year was above Rs.1.5 crore and up to Rs.5 crore (Notification No. 19/2021-Central Tax for GSTR-3B; the position for GSTR-1 is similar). No waiver or amnesty scheme covers the periods in question. All the returns being more than 100 days late, each return attracts the cap of Rs.5,000/- (Rs.2,500/- each under the CGST and GGST Acts): six GSTR-3B returns, Rs.30,000/-, and five GSTR-1 returns, Rs.25,000/-, i.e. Rs.55,000/- in all, to be paid with the returns.

8. Penalty on the tax - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher: Rs.77,850/- under each Act (Rs.1,55,700/- in all). Why not Section 74A(5)(ii)? Every sale was invoiced openly, with tax, and entered in the books; the buyers were given the invoices; the bank trail is complete; GSTR-1 for April was furnished; the Noticee produced his records at the first summons and admitted the default, the reason being want of funds and a lapse of compliance. There is no concealment of facts and no device to evade tax, so the default is treated as a non-fraud case. The default in furnishing returns, though, is not by itself proof of intention to evade: the non-declaration of facts in the definition of 'suppression' has to be read with the words 'to evade tax' in Section 74A(5)(ii). If, however, the invoices had been suppressed or the collected tax diverted by a device, the charge would be altered to clause (ii). **Section 74A(8)** (no notice if tax and interest are paid before the notice;

no penalty if paid within sixty days) is not available for the tax collected from buyers and not paid within thirty days of the due date [Section 74A(11)], so the ten per cent penalty is payable even if the tax and interest are paid. A separate penalty under Section 122(1)(iii) (tax collected and not paid beyond three months) is not proposed, as Section 75(13) forbids a second penalty for the same act. A penalty for non-filing under Section 122 or Section 125 is also not proposed: late fee is the specific consequence of the delay, and the Master Chart's reference to a 'penalty up to Rs.25,000 under Section 122' for return default does not correspond to any clause of Section 122.

9. Alternative route for the collected tax - Section 76 (not adopted) - the tax collected in the invoices could also be recovered under **Section 76**, which has no outer limit for the notice and requires the order within one year of the notice. It is not adopted because the demand is made for tax on the supplies and not on the amounts collected (the two coincide here), and Section 74A gives the single proceeding in which tax, interest and penalty are determined. See Exercise-33.

10. Cancellation of registration - **Section 29(2)(c)** permits the proper officer to cancel the registration of a registered person (other than a composition taxpayer) who 'has not furnished returns for a continuous period of six months', from such date, including a retrospective date, as he deems fit, after giving him a hearing (FORM GST REG-17 notice). The six-month default was complete on 20.10.2025. Cancellation is not proposed: the power is discretionary, the Noticee has resumed filing, and cancellation would not clear the dues, since by **Section 29(3)** it does not affect liability for the period before it. Rule 21A(2A), mentioned in the Chart context, is not the provision for non-filing (it deals with return mismatches and Rule 10A); the general power of suspension is in Rule 21A(2). If the default continues, a REG-17 notice should be issued. Other consequences of continued default: blocking of e-way bill generation (Rule 138E), restriction on filing of FORM GSTR-1, a lower compliance rating, and loss of input tax credit for FY 2025-26 if the returns are not furnished in time [Section 16(4)].

11. Recovery and prosecution - the tax determined is recovered under Sections 78 and 79. Section 132 is considered: the tax collected and not paid (Rs.15,57,000/- + Rs.2,52,000/-, including State tax) is far below the Section 132(1) limits for clause (d), and prosecution is not proposed.

Illustrative working of the tax and interest proposed to be demanded (May to September 2025; all supplies at 18%):

Month	Taxable value (Rs.)	CGST @9% (Rs.)	GGST @9% (Rs.)	Total tax (Rs.)
May-2025	16,00,000	1,44,000	1,44,000	2,88,000
Jun-2025	15,50,000	1,39,500	1,39,500	2,79,000
Jul-2025	18,00,000	1,62,000	1,62,000	3,24,000
Aug-2025	19,50,000	1,75,500	1,75,500	3,51,000
Sep-2025	17,50,000	1,57,500	1,57,500	3,15,000
TOTAL	**86,50,000**	**7,78,500**	**7,78,500**	**15,57,000**

Month	Interest from	Days to 30.11.2026	Interest per Act (Rs.)	Interest, both Acts (Rs.)
May-2025	21.06.2025	528	37,495	74,990
Jun-2025	21.07.2025	498	34,260	68,520
Jul-2025	21.08.2025	467	37,309	74,618
Aug-2025	21.09.2025	436	37,735	75,470
Sep-2025	21.10.2025	406	31,535	63,070
TOTAL			**1,78,334**	**3,56,668**

Item	Provision	CGST (Rs.)	GGST (Rs.)	Total (Rs.)
Tax, May-Sep 2025	S.74A(1), SCN	7,78,500	7,78,500	15,57,000

Item	Provision	CGST (Rs.)	GGST (Rs.)	Total (Rs.)
Penalty	S.74A(5)(i), SCN	77,850	77,850	1,55,700
Tax, Apr 2025 (GSTR-1)	S.75(12), S.79	1,26,000	1,26,000	2,52,000
Late fee, 11 returns	S.47, portal	27,500	27,500	55,000

Basis: *Taxable value is the value of the invoices (the tax shown in them being over and above that value). The due date of GSTR-3B is the 20th of the following month for a regular monthly filer. Interest is simple interest at 18% for the actual number of days from the day after the due date to 30.11.2026. The last two rows of the last table are not demanded in the notice.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Rajkot, Gujarat, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [.], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the outward supplies of goods of aggregate taxable value of Rs.86,50,000/- made by them during May 2025 to September 2025, not reported in FORM GSTR-1 or FORM GSTR-3B, should not be held to be taxable supplies on which tax was payable and not paid, in contravention of Sections 9(1), 37(1) and 39(1) of the CGST Act, 2017/GGST Act, 2017;

(ii) an amount of Rs.7,78,500/- (Central tax) and Rs.7,78,500/- (Gujarat State tax), total Rs.15,57,000/- (Rupees Fifteen Lakh Fifty-Seven Thousand only), being tax not paid on the said supplies as detailed in Annexure-A, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the day after the due date of GSTR-3B of each month till the date of payment;

(iv) a penalty of Rs.77,850/- (Central tax) and Rs.77,850/- (Gujarat State tax), total Rs.1,55,700/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to such benefit as may be available to them under Section 74A(8) and Section 74A(11)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[.]/2026-RAJKOT

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [.], Division - [.], Rajkot CGST Commissionerate, Gujarat

Date: [.].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Gujarat Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN 24[...]),
YYYY, Rajkot, Gujarat.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS the Noticee is registered under the CGST Act, 2017 and the GGST Act, 2017 (GSTIN 24[...]) as a regular monthly filer and trades in and manufactures industrial fasteners (HSN 7318), taxable at 18% (9% CGST + 9% GGST). Verification of the common portal shows that the Noticee did not furnish the return in FORM GSTR-3B for the tax periods April 2025 to September 2025, due on 20.05.2025 to 20.10.2025, and did not furnish the statement of outward supplies in FORM GSTR-1 for May 2025 to September 2025 (RUD-1);

2. AND WHEREAS notices in FORM GSTR-3A under Section 46 of the CGST Act, 2017 were issued to the Noticee on 02.06.2025, 02.07.2025, 02.08.2025, 02.09.2025, 03.10.2025 and 03.11.2025, for the six tax periods respectively, requiring him to furnish the returns within fifteen days, and a reminder letter was issued on 10.12.2025; the Noticee did not furnish the returns (RUD-2);

3. AND WHEREAS a summons dated 05.01.2026 under Section 70 of the CGST Act, 2017 was issued to the Noticee (RUD-3), in response to which he appeared on 19.01.2026 and produced the sale invoice books and purchase register for April to September 2025, the statement of his current account and e-way bill records (RUD-4 to RUD-7);

4. AND WHEREAS the Noticee, in his statement recorded on 19.01.2026 under Section 70 (RUD-8), admitted, inter alia, that he issued tax invoices throughout the period and collected tax from the buyers; that he used the money to pay wages and suppliers; that he saw the notices on the portal but did not furnish the returns, thinking that he would furnish them together later; and that he was willing to furnish the returns and to pay the tax, interest and late fee;

5. AND WHEREAS the invoices of April 2025 (taxable value Rs.14,00,000/-) were declared in GSTR-1 for April 2025, the tax thereon not having been paid through GSTR-3B; this being 'self-assessed tax' within the Explanation to Section 75(12) of the CGST Act, 2017, it is not made the subject matter of this notice, and is to be recovered under Section 79 after a separate communication in terms of CBIC Instruction No. 01/2022-GST dated 07.01.2022;

6. AND WHEREAS the invoice books show that the Noticee made outward taxable supplies of Rs.16,00,000/- in May 2025, Rs.15,50,000/- in June 2025, Rs.18,00,000/- in July 2025, Rs.19,50,000/- in August 2025 and Rs.17,50,000/- in September 2025, aggregating Rs.86,50,000/-, none of which was reported in GSTR-1 or GSTR-3B. These invoices agree with the e-way bill data (taxable value Rs.61,30,000/- for the consignments above Rs.50,000/-), with the written confirmations of the buyers and with the bank credits of Rs.1,02,07,000/- received from the customers, which equal the invoice value plus tax at 18% (RUD-4 to RUD-7, RUD-9; Annexure-A);

7. AND WHEREAS the tax payable at 18% on the said Rs.86,50,000/- is Rs.7,78,500/- each under the CGST Act and the GGST Act, total Rs.15,57,000/-, which has not been paid. No input tax credit has been taken, as no return was furnished, and the Noticee will be entitled to such eligible credit as he may

validly take in the returns, in the manner and time provided in the Act;

8. AND WHEREAS the proper officer has considered assessment under Section 62 of the CGST Act, 2017 and has decided to proceed under Section 74A for the tax periods May to September 2025, the quantum of the tax being established by the invoices and the bank credits and the Noticee being entitled to a hearing on the penalty also; no assessment order under Section 62 has been made or is proposed for the said tax periods;

9. AND WHEREAS the Noticee issued invoices openly, recorded the sales in his books, produced his records on the first summons and admitted the default, and the default appears to be a case other than fraud, wilful misstatement or suppression of facts to evade tax, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017; the tax having been collected from the buyers and not paid within thirty days of the due date, the provisions of Section 74A(11) are noticed;

10. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the GGST Act, 2017):

- Section 39(1) read with Rules 61 and 61A - failure to furnish FORM GSTR-3B and to pay tax for April to September 2025, even after the notices under Section 46;
- Section 37(1) read with Rule 59 - failure to furnish FORM GSTR-1 for May to September 2025;
- Section 9(1) - non-payment of tax on the outward supplies of May to September 2025;

11. AND WHEREAS the aforesaid acts and omissions of the Noticee render him liable to:

(a) demand and recovery of tax under Section 74A of the CGST Act, 2017/GGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/GGST Act, 2017; and

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017;

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Rajkot, Gujarat, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [.], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the outward supplies of goods of aggregate taxable value of Rs.86,50,000/- made by them during May 2025 to September 2025, not reported in FORM GSTR-1 or FORM GSTR-3B, should not be held to be taxable supplies on which tax was payable and not paid, in contravention of Sections 9(1), 37(1) and 39(1) of the CGST Act, 2017/GGST Act, 2017;

(ii) an amount of Rs.7,78,500/- (Central tax) and Rs.7,78,500/- (Gujarat State tax), total Rs.15,57,000/- (Rupees Fifteen Lakh Fifty-Seven Thousand only), being tax not paid on the said supplies as detailed in Annexure-A to this notice, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the day after the due date of GSTR-3B of each month till the date of payment;

(iv) a penalty of Rs.77,850/- (Central tax) and Rs.77,850/- (Gujarat State tax), total Rs.1,55,700/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to such benefit as may be available to them under Section 74A(8) and Section 74A(11)).

12. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately

intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;

- the Noticee is advised to furnish the pending returns forthwith, with payment of tax, interest and late fee under Section 47, which is levied by the common portal and is not a part of this notice, and to note that the time for taking input tax credit for FY 2025-26 under Section 16(4) is limited, and that continued default in furnishing returns may lead to cancellation of registration under Section 29(2)(c);
- attention is drawn to the provisions of Section 74A(8), (9) and (11) of the CGST Act, 2017/GGST Act, 2017 regarding payment of tax and interest within the periods specified therein;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/GGST Act, 2017, including recovery of the tax of April 2025 under Section 79, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Return status of GSTIN 24[...] for April 2025 to September 2025 (GSTR-1 and GSTR-3B) downloaded from the common portal;

RUD-2: Notices in FORM GSTR-3A dated 02.06.2025 to 03.11.2025 and the reminder letter dated 10.12.2025;

RUD-3: Summons dated 05.01.2026 issued under Section 70 of the CGST Act, 2017, with proof of service;

RUD-4: Sale invoice books of April to September 2025 produced on 19.01.2026;

RUD-5: Purchase register and GSTR-2B for April to September 2025;

RUD-6: Statement of the current account of the Noticee for April to September 2025;

RUD-7: E-way bill data for May to September 2025;

RUD-8: Statement of Mr. Z recorded under Section 70 on 19.01.2026;

RUD-9: Written confirmations of the buyers regarding payment of tax with the price;

Annexure-A: Month-wise statement of invoices, bank credits, tax and interest [as per the working in Part B and the table in the Situation].

(_____)
Superintendent, CGST
Range - [.], Division - [.], Rajkot CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Rajkot, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The dates of the GSTR-3A notices are illustrative.*
- ***Teaching point - the non-filer.*** *Exercise-15 deals with a taxpayer who filed GSTR-1 and GSTR-3B and the figures differ; Exercise-33 deals with tax collected and not paid. Here the returns themselves are missing, and the first question is the choice of procedure. The learner should follow the sequence: GSTR-3A under Section 46 -> assessment under Section 62 or SCN under Section 74A -> recovery of self-assessed tax under Section 79 -> cancellation risk under Section 29(2)(c). Late fee is automatic, and is distinct from penalty.*
- ***Section 62 or Section 74A?*** *The notice is drafted under Section 74A, as the exercise requires, but the Section 62 option is explained in B-2 to B-4. The two cannot sensibly be run together for the same period; Section 62(1) has a non-obstante clause over Sections 73, 74 and 74A but the Act does not state the bar in terms, and the safe discipline is to choose one route per tax period and record it on the file (the notice records it at paragraph 8). A Section 62 order carries no penalty and is deemed withdrawn on filing of a*

valid return within sixty days (extendable by a further sixty days); a Section 74A notice does not fall on filing of the returns.

- ***Fraud or non-fraud?*** *Section 74A(5)(i) is proposed because there is no concealment: open invoices, books, bank trail, records produced on the first summons. Mere non-filing is not suppression to evade tax, and a notice that alleged Section 74A(5)(ii) on that ground alone would not survive. If the facts had shown parallel books or diversion of the collected tax, the charge would be altered; compare Exercise-14.*
- ***Late fee v penalty.*** *Section 47 late fee is levied by the portal at the time of filing, at the notified rates (Rs.25/- per day under each Act, with caps depending on the turnover slab; Rs.20/- per day and Rs.500/- cap for nil returns), and not by the adjudicating officer. The Master Chart quotes the rate of the Act (Rs.100/- per day, maximum Rs.5,000/-); the notified rates apply. Do not put late fee in the charging paragraph, and do not impose a penalty for non-filing under Section 122, no clause of which covers it.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.7,78,500/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 59

Failure to furnish the annual return and the reconciliation statement by the due date, despite a notice under Section 46, with unreported turnover coming to light - Sections 44, 46, 47(2), 74A(2) and 125

Exercise 59: Failure to furnish the annual return and the reconciliation statement by the due date, despite a notice under Section 46, with unreported turnover coming to light - Sections 44, 46, 47(2), 74A(2) and 125

Situation in Brief:

1. M/s XXX Industries Pvt. Ltd. (hereinafter 'M/s XXX'), having its registered office and factory at YYYY, GIDC, Rajkot, Gujarat, is a registered person (monthly return filer) engaged in the manufacture of steel office furniture and storage systems (HSN 9403, taxable at 18%, i.e. 9% central tax and 9% Gujarat State tax), supplied to dealers and institutional buyers within Gujarat. It has no registration in any other State and made no exports. Mr. Z is its Managing Director; Mr. P is its Chief Finance Officer, who also looks after GST compliance with the help of an ERP system. Its accounts are audited under the Companies Act, 2013 and the Income-tax Act, 1961.

2. M/s XXX furnished FORM GSTR-1 and FORM GSTR-3B for every month of FY 2024-25 by the due dates, declaring taxable outward supplies of Rs.40,65,00,000/- in the year. The annual return in FORM GSTR-9 and the self-certified reconciliation statement in FORM GSTR-9C for FY 2024-25 were due on 31.12.2025 [Rule 80(1) and (3) of the CGST Rules, 2017]. M/s XXX did not furnish either. The portal shows that neither has been furnished even on 31.10.2026.

3. A notice under Section 46 of the CGST Act, 2017 in FORM GSTR-3A was issued electronically to M/s XXX on 12.01.2026 (Rule 68), requiring it to furnish the annual return and the reconciliation statement within fifteen days. There was no reply and no filing. A reminder letter dated 05.03.2026 from the jurisdictional Superintendent was also not answered.

4. A summons dated 20.02.2026 under Section 70 of the CGST Act, 2017 was issued to M/s XXX, calling for the audited financial statements for FY 2024-25 (signed on 29.08.2025 and adopted at the annual general meeting on 30.09.2025), the trial balance, the sales ledgers, the GST ledgers and the working papers, if any, for FORM GSTR-9/9C. The documents were produced on 10.03.2026 by Mr. P. Note 22 to the audited accounts (Revenue from operations) shows Rs.42,00,00,000/-, made up of (a) sale of products against tax invoices (ERP ledger 4001), Rs.40,65,00,000/-, which agrees with the turnover in GSTR-1/GSTR-3B; and (b) 'sale of products - showroom estimate' (ERP ledger 4007), Rs.1,35,00,000/-, which has not been declared in any GST return.

5. The factory showroom at Rajkot sells small lots to walk-in customers (small offices, schools, clinics). For these sales the showroom issued 'estimate bills' (1,846 bills in 24 books) carrying the customer's name but no GSTIN, no tax and no tax invoice number. The receipts (cash, UPI and cheques) were deposited in the company's current account. In the ERP, ledger 4007 is mapped to the group 'Other operating income - non-GST', a setting made by the software vendor in 2019 and never reviewed; the GST sales report from which GSTR-1 and GSTR-3B are prepared draws only on ledger 4001. The month-wise sales on estimate bills in FY 2024-25 are as follows (the tax column is the tax that would have been payable at 18%):

Month	Sales on estimate bills (Rs.)	Central tax @9% (Rs.)	Gujarat tax @9% (Rs.)	Total (Rs.)
Apr-2024	8,00,000	72,000	72,000	1,44,000
May-2024	9,50,000	85,500	85,500	1,71,000
Jun-2024	10,00,000	90,000	90,000	1,80,000
Jul-2024	9,00,000	81,000	81,000	1,62,000
Aug-2024	11,00,000	99,000	99,000	1,98,000
Sep-2024	12,50,000	1,12,500	1,12,500	2,25,000
Oct-2024	14,00,000	1,26,000	1,26,000	2,52,000
Nov-2024	15,50,000	1,39,500	1,39,500	2,79,000
Dec-2024	12,00,000	1,08,000	1,08,000	2,16,000
Jan-2025	11,00,000	99,000	99,000	1,98,000

Month	Sales on estimate bills (Rs.)	Central tax @9% (Rs.)	Gujarat tax @9% (Rs.)	Total (Rs.)
Feb-2025	10,50,000	94,500	94,500	1,89,000
Mar-2025	12,00,000	1,08,000	1,08,000	2,16,000
TOTAL	**1,35,00,000**	**12,15,000**	**12,15,000**	**24,30,000**

6. The statement of Mr. P was recorded on 25.03.2026 under Section 70, wherein he stated that ledger 4007 was created in 2019 for the showroom and was never reviewed for GST; that GSTR-3B is prepared from the 'GST sales' report of the ERP; that in November 2025, while starting the working for FORM GSTR-9C, he noticed that the turnover in the audited accounts exceeded the turnover in the GST returns by about Rs.1.35 crore; that he reported this to Mr. Z, who told him to take a consultant's opinion and to file the annual return after reconciling; that no consultant was engaged; that the electronic notice of 12.01.2026 went to the e-mail address of an employee who had left the company, and was not seen; and that nothing has been paid or disclosed to the department. The statement of Mr. Z was recorded on 26.03.2026, wherein he confirmed the above, stated that the audited accounts, the tax audit report and the income-tax return filed on 30.10.2025 all show the full turnover of Rs.42,00,00,000/-, that he never intended to hide anything from the Government, and that he is willing to pay whatever is determined.

7. A communication in FORM GST DRC-01A dated 14.07.2026 (Rule 142(1A)) intimated the tax of Rs.24,30,000/- (Rs.12,15,000/- each under the CGST and Gujarat Acts) and interest. M/s XXX replied on 29.07.2026 that it would 'file GSTR-9 and 9C soon' and requested time. Neither return has been furnished and no payment has been made.

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Industries Pvt. Ltd. (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Industries Pvt. Ltd. (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Industries Pvt. Ltd., calling upon it to show cause as to why action should not be taken against it, while listing the proposed action to be taken against it.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX Industries Pvt. Ltd.

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SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Industries Pvt. Ltd., Rajkot CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017 [GGST Act] and the Rules made under the two Acts):

1. **Section 44(1) of the CGST Act, 2017 read with Rule 80(1)** - failure to furnish the annual return in FORM GSTR-9 for FY 2024-25 by 31.12.2025. The default continues even after the notice under Section 46. M/s XXX is not within any exclusion: the exclusions in the second proviso to Section 44(1) cover input service distributors, persons deducting or collecting tax under Section 51 or 52, casual taxable persons and non-resident taxable persons, and the exemption of Notification No. 15/2025-Central Tax dated 17.09.2025 covers only registered persons with aggregate turnover up to Rs.2 crore (for FY 2024-25 onwards). Aggregate turnover here is Rs.42,00,00,000/-.
2. **Section 44 read with Rule 80(3)** - failure to furnish, along with the annual return, the self-certified reconciliation statement in FORM GSTR-9C. Every registered person whose aggregate turnover in the year exceeds Rs.5 crore must furnish it. The statement is certified by the registered person himself; the earlier requirement of audit and certification by a chartered accountant or cost accountant under Section 35(5) was done away with from 01.08.2021, as explained in Part B.
3. **Section 9(1) read with Section 15 and Section 39(1) and (7)** - non-payment of tax at 18% (9% CGST + 9% GGST) on the supplies of goods of value Rs.1,35,00,000/- made through the showroom in FY 2024-25 and not reported in FORM GSTR-3B.
4. **Section 31(1) read with Rule 46** - failure to issue tax invoices for the showroom supplies; 'estimate bills' without tax were issued instead.
5. **Section 37(1)** - failure to furnish the details of the showroom supplies in FORM GSTR-1.

Note: *Section 35(1) read with Rule 56 (maintenance of accounts) is not contravened: the showroom sales were fully recorded in the books (ledger 4007) and in the audited accounts. The omission lay in the GST returns, not in the books. This matters for the fraud/non-fraud question discussed in Part B. Section 46 is not itself a 'contravention' - it is the notice which marks the default under Section 44 as continuing and is a pre-condition for action under Section 62 for returns covered by that section.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the GGST Act, 2017). Two kinds of consequence must be kept apart: the consequences of the *return default* (items 1 to 3 and 8), which carry no tax, and the consequences of the *tax default* which the return default had concealed (items 4 to 7).

1. Late fee for the annual return - under **Section 47(2)**: a late fee of Rs.100 per day under the CGST Act and Rs.100 per day under the GGST Act (Rs.200 in all) for every day of default, subject to a maximum of 0.25% of the turnover in the State under each Act. It runs from 01.01.2026 (the day after the due date) till the return is furnished. Turnover in the State is Rs.42,00,00,000/- (including the showroom sales), so the maximum is Rs.10,50,000/- under each Act, which would be reached only after 10,500 days; it is of no practical relevance here. Up to 30.11.2026 (334 days) the late fee is Rs.33,400/- under each Act (Rs.66,800/- in all). The turnover-slab concessions of Notification No. 07/2023-Central Tax dated 31.03.2023 reduce the fee only for aggregate turnover up to Rs.20 crore (Rs.50 per day and 0.04% cap up to Rs.5 crore; Rs.100 per day and 0.04% cap above Rs.5 crore and up to Rs.20 crore), and therefore do not help M/s XXX. *A single late fee is charged for the single default under Section 44*, because FORM GSTR-9C is furnished along with the annual return and not as a separate return. The late fee is a statutory fee, not a penalty: it is computed by the portal and paid when the return is filed, it is not governed by Sections 74A, 75(13) or 126, and it is payable even if the return is filed after the notice is

issued.

2. Notice under Section 46 - issued on 12.01.2026 (FORM GSTR-3A, Rule 68); fifteen days were allowed. The notice has two consequences. First, it fixes the date from which the default is treated as deliberate and uncured. Second, in the case of returns covered by Section 62 (monthly/quarterly returns under Section 39 and the final return under Section 45), it opens the door to assessment to the best of judgment. *Section 62 does not cover the annual return under Section 44*; best-judgment assessment is therefore not available for a default in the annual return. Moreover, M/s XXX has filed all its GSTR-1/3B, so there is no Section 39 default to assess.

3. Section 35(5) and the audit position - Section 35(5) (audit of accounts above a turnover limit, with the audited accounts and the reconciliation statement furnished with the annual return) was omitted, and Section 44 was substituted so that the reconciliation statement is self-certified, by the Finance Act, 2021 with effect from 01.08.2021. The department's own powers of audit under Section 65 and of special audit by a chartered or cost accountant under Section 66 continue and may be used to verify a GSTR-9C. Here the department needed neither, because the company produced its audited accounts on summons.

4. Determination and recovery of tax - under **Section 74A(1)**. The demand pertains to FY 2024-25, the first year to which Section 74A applies [Section 74A(12) and Notification No. 17/2024-Central Tax dated 27.09.2024]. Limitation - the notice must be issued within forty-two months from the due date of furnishing the annual return for the financial year to which the tax not paid relates [Section 74A(2)]. The test is the *due date*, not the date on which the return is actually furnished. The due date for FY 2024-25 is 31.12.2025, so the last date for the notice is 30.06.2029 (31.12.2025 + 42 months). The failure to furnish the annual return therefore neither extends nor shortens the period: a defaulter does not gain from a missing return (the clock runs all the same) and does not lose anything either (the department cannot be told that the period has not begun to run). Even if GSTR-9 is furnished tomorrow, the last date remains 30.06.2029. The order must be passed within twelve months from the date of the notice [Section 74A(7)], extendable by six months by the competent officer for reasons recorded in writing. The tax is the tax on the whole value of the showroom supplies, Rs.1,35,00,000/-: no exemption or threshold is available to a registered manufacturer of furniture, and ITC is unaffected.

5. Interest - under **Section 50(1)** at 18% per annum, month by month from the day after the due date of FORM GSTR-3B for each month (the 20th of the following month) till payment. Illustratively, up to 30.11.2026, it is Rs.4,46,769/- under each Act (Rs.8,93,538/- in all), as worked out in the table below.

6. Penalty on the tax - under **Section 74A(5)(i)**, i.e. ten per cent of the tax due or Rs.10,000/-, whichever is higher, under each Act: Rs.1,21,500/- under each Act (Rs.2,43,000/- in all). The charge is *not* fraud, wilful misstatement or suppression, so Section 74A(5)(ii) is not invoked. Reasons: (a) the showroom sales were fully recorded in the books, in the audited accounts, in the tax audit report and in the income-tax return; (b) the omission arose from a ledger mapping in the ERP made in 2019 and never reviewed, and the company produced all records at the first summons; (c) the estimate bills were issued in the open, in the company's own name, from its own showroom, and the receipts went into its own bank account; (d) the later conduct of Mr. P and Mr. Z (holding back the annual return after noticing the variance in November 2025, and ignoring the Section 46 notice) is poor, but the test under Section 74A(5) is the reason for the *non-payment of the tax in the earlier months*, which was the mapping error, and not the later inaction. The concession of **Section 74A(8)** is available to M/s XXX: no penalty if tax and interest are paid before the notice [clause (i)] or within sixty days of the notice [clause (ii)]; the proceedings are then concluded. Section 74A(11) is not attracted because no 'self-assessed tax' in a valid return and no tax collected from customers is involved. If evidence were to emerge that the variance was known and kept out of the returns deliberately (for example, instructions to the sales staff to avoid tax invoices), the charge would move to Section 74A(5)(ii) and the concessions of Section 74A(9).

7. Specific offence penalty - **Section 122(1)(i)** (supply of goods without issue of invoice) is also attracted. As a penalty is proposed under Section 74A(5)(i) for the same default, it is proposed only in the alternative, subject to the bar on double penalty [Section 75(13)] and the general disciplines of Section 126. Section 122(1)(xv) (suppression of turnover) is not invoked, for the reasons given at item 6.

8. Penalty for the return default - **Section 125** (general penalty for contravention of any provision of the

Act or the Rules for which no penalty is separately provided), which may extend to Rs.25,000/- under each Act. *Why Section 125 and not Section 122?* None of the twenty-one clauses of Section 122(1) deals with failure to furnish a return, so Section 125 is the only penalty provision that can apply. *Late fee and penalty together?* The late fee under Section 47(2) is the specific consequence for delay; the penalty under Section 125 is proposed for something more - the continued refusal to furnish the return after a notice under Section 46 and a reminder - and is a discretionary penalty to be fixed by the adjudicating authority having regard to Section 126 (the default is not a 'minor breach': a statutory notice was ignored). The adjudicating authority may hold that the late fee exhausts the consequence; the notice proposes it so that the point can be decided.

9. Persons to be charged - the company alone, as the registered person who failed to file and to pay. Mr. Z and Mr. P are the officers through whom the company acted; no penalty is proposed on them under Section 122(3), since no personal gain, concealment or abetment of tax evasion is on record. This is to be reviewed if later evidence shows otherwise.

10. Recovery - under Sections 78 and 79, if the confirmed amount is not paid within the time allowed.

11. Alternatives not adopted - (a) assessment under Section 62 (not available, as explained at item 2); (b) cancellation of registration under Section 29(2) (not proposed: the company is otherwise compliant and cancellation would not remove the liability [Section 29(3)] but would disrupt its trade); (c) provisional attachment under Section 83 (not warranted: the company has produced its records and expressed its willingness to pay).

12. Prosecution - Section 132 has been considered and is not proposed. No clause of Section 132(1) makes failure to furnish an annual return an offence in itself, and the tax involved (Rs.24,30,000/- including the State tax) is below the monetary limits of Section 132(1), with no evidence of intention to evade.

Illustrative working of the tax proposed to be demanded (18% = 9% CGST + 9% GGST on the sales on estimate bills; value taken as received, no tax having been charged separately):

Tax period	Taxable value (Rs.)	CGST @9% (Rs.)	GGST @9% (Rs.)	Total tax (Rs.)
Apr-2024	8,00,000	72,000	72,000	1,44,000
May-2024	9,50,000	85,500	85,500	1,71,000
Jun-2024	10,00,000	90,000	90,000	1,80,000
Jul-2024	9,00,000	81,000	81,000	1,62,000
Aug-2024	11,00,000	99,000	99,000	1,98,000
Sep-2024	12,50,000	1,12,500	1,12,500	2,25,000
Oct-2024	14,00,000	1,26,000	1,26,000	2,52,000
Nov-2024	15,50,000	1,39,500	1,39,500	2,79,000
Dec-2024	12,00,000	1,08,000	1,08,000	2,16,000
Jan-2025	11,00,000	99,000	99,000	1,98,000
Feb-2025	10,50,000	94,500	94,500	1,89,000
Mar-2025	12,00,000	1,08,000	1,08,000	2,16,000
TOTAL	**1,35,00,000**	**12,15,000**	**12,15,000**	**24,30,000**

Illustrative working of interest under Section 50(1) (18% per annum, simple, up to 30.11.2026):

Tax period	GSTR-3B due date	Days to 30.11.2026	Interest - CGST (Rs.)	Interest - CGST + GGST (Rs.)
Apr-2024	20.05.2024	924	32,808	65,616
May-2024	20.06.2024	893	37,653	75,306
Jun-2024	20.07.2024	863	38,303	76,606

Tax period	GSTR-3B due date	Days to 30.11.2026	Interest - CGST (Rs.)	Interest - CGST + GGST (Rs.)
Jul-2024	20.08.2024	832	33,234	66,468
Aug-2024	20.09.2024	801	39,106	78,212
Sep-2024	20.10.2024	771	42,775	85,550
Oct-2024	20.11.2024	740	45,981	91,962
Nov-2024	20.12.2024	710	48,844	97,688
Dec-2024	20.01.2025	679	36,164	72,328
Jan-2025	20.02.2025	648	31,637	63,274
Feb-2025	20.03.2025	620	28,894	57,788
Mar-2025	20.04.2025	589	31,370	62,740
TOTAL			**4,46,769**	**8,93,538**

Working of the late fee under Section 47(2) and of the limitation under Section 74A(2):

Item	Working	Result
Due date of GSTR-9/9C for FY 2024-25	Rule 80(1) and (3): 31st December following the year	31.12.2025
Days of default to 30.11.2026	01.01.2026 to 30.11.2026	334 days
Late fee under each Act	334 days x Rs.100	Rs.33,400
Maximum under each Act	0.25% of turnover in the State, Rs.42,00,00,000	Rs.10,50,000
Last date of notice, Section 74A(2)	31.12.2025 + 42 months (the return not being furnished makes no difference)	30.06.2029
Last date of order, Section 74A(7)	12 months from the date of the notice (plus up to 6 months, if extended)	12 (+6) months

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Industries Pvt. Ltd., having its registered office and factory at YYYY, GIDC, Rajkot, Gujarat, through its Managing Director, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the sales of goods of aggregate value of Rs.1,35,00,000/- made through its showroom against estimate bills during FY 2024-25 should not be held to be taxable supplies of goods, on which tax was payable at 18% and which were required to be covered by tax invoices and reported in FORM GSTR-1 and FORM GSTR-3B, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) and (7) of the CGST Act, 2017/GGST Act, 2017;

(ii) an amount of Rs.12,15,000/- (Central tax) and Rs.12,15,000/- (Gujarat State tax), total Rs.24,30,000/- (Rupees Twenty-Four Lakh Thirty Thousand only), being tax not paid on the taxable value of Rs.1,35,00,000/- as detailed in Annexure-A, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered on the tax at (ii) above, month by month from the day after the

due date of FORM GSTR-3B for the respective month, till the date of payment;

(iv) a penalty of Rs.1,21,500/- (Central tax) and Rs.1,21,500/- (Gujarat State tax), total Rs.2,43,000/-, being ten per cent of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8));

(v) the late fee under Section 47(2) of the CGST Act, 2017/GGST Act, 2017 for failure to furnish the annual return for FY 2024-25 by 31.12.2025, accrued at Rs.33,400/- under each Act up to 30.11.2026 and continuing at Rs.100 per day under each Act till the return is furnished, should not be directed to be paid;

(vi) a penalty under Section 125 of the CGST Act, 2017/GGST Act, 2017, not exceeding Rs.25,000/- under each Act, should not be imposed on it for failure to furnish the annual return in FORM GSTR-9 and the reconciliation statement in FORM GSTR-9C for FY 2024-25 despite the notice dated 12.01.2026 under Section 46;

(vii) penalty should not separately be imposed on it under Section 122(1)(i) of the CGST Act, 2017/GGST Act, 2017, in the alternative to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-RAJKOT

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Rajkot CGST Commissionerate, Gujarat

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Gujarat Goods and Services Tax Act, 2017)

To,
M/s XXX Industries Pvt. Ltd.,
(through Mr. Z, Managing Director)
YYYY, GIDC, Rajkot, Gujarat.

(hereinafter referred to as 'the Noticee')

WHEREAS the Noticee is a registered person, a manufacturer of steel office furniture (HSN 9403, taxable at 18%), filing monthly returns. It furnished FORM GSTR-1 and FORM GSTR-3B for every month of FY 2024-25, declaring taxable outward supplies of Rs.40,65,00,000/- (RUD-2);

2. AND WHEREAS the Noticee, whose aggregate turnover exceeds Rs.5 crore, was required to furnish the annual return in FORM GSTR-9 and the self-certified reconciliation statement in FORM GSTR-9C for FY 2024-25 by 31.12.2025 under Section 44 of the Act read with Rule 80(1) and (3) of the CGST Rules, 2017. It furnished neither. A notice dated 12.01.2026 under Section 46 of the Act (FORM GSTR-3A) required it to furnish the return within fifteen days; it neither replied nor filed (RUD-1, RUD-2). A reminder letter dated 05.03.2026 also remained unanswered (RUD-3);

3. AND WHEREAS a summons dated 20.02.2026 under Section 70 of the Act was issued (RUD-4), in response to which Mr. P, Chief Finance Officer, produced on 10.03.2026 the audited financial statements for FY 2024-25, the trial balance and the ERP ledgers (RUD-5). Note 22 to the audited accounts shows Revenue from operations of Rs.42,00,00,000/-, made up of Rs.40,65,00,000/- (ledger 4001, sales against tax invoices, agreeing with the GST returns) and Rs.1,35,00,000/- (ledger 4007, 'sale of products - showroom estimate'), which is not reflected in any GST return;

4. AND WHEREAS examination of 24 books of estimate bills (1,846 bills) of the factory showroom at Rajkot, the ERP ledger 4007 and the bank statements of the Noticee's current account showed that the Noticee supplied goods to walk-in customers against estimate bills carrying no GSTIN, no tax and no tax invoice number, and received Rs.1,35,00,000/- in cash, through UPI and by cheque, all of which was deposited in its current account (RUD-6, RUD-7). The ERP maps ledger 4007 to the group 'Other operating income - non-GST', so the GST sales report used for the returns excludes it (RUD-5). The month-wise value, tax and interest are shown in Annexure-A;

5. AND WHEREAS the statement of Mr. P was recorded on 25.03.2026 under Section 70 (RUD-8), wherein he stated, inter alia, that ledger 4007 was created in 2019 and never reviewed for GST; that in November 2025, while starting the working for FORM GSTR-9C, he noticed that the turnover in the audited accounts exceeded that in the GST returns by about Rs.1.35 crore; that he reported it to Mr. Z, who asked him to take a consultant's opinion and file after reconciling; that no consultant was engaged; and that the department's electronic notice went to the e-mail address of an employee who had left. The statement of Mr. Z was recorded on 26.03.2026 (RUD-9), wherein he confirmed the above and stated that the full turnover is disclosed in the audited accounts, the tax audit report and the income-tax return;

6. AND WHEREAS it appears that the supplies of goods of value Rs.1,35,00,000/- made through the showroom during FY 2024-25 were taxable supplies on which tax at 18% (9% CGST + 9% GGST) was payable and for which tax invoices were required to be issued under Section 31(1) read with Rule 46, and which were required to be reported in FORM GSTR-1 under Section 37(1) and in FORM GSTR-3B

under Section 39(1) with payment of tax under Section 39(7). The tax so payable is Rs.12,15,000/- each under the CGST Act and the GGST Act, total Rs.24,30,000/-;

7. AND WHEREAS a communication in FORM GST DRC-01A dated 14.07.2026 intimated the tax and interest, but the Noticee has paid nothing and has not furnished the returns (RUD-10);

8. AND WHEREAS, since the sales were recorded in the books of account and the audited financial statements and in the income-tax return, were produced voluntarily on summons, and the failure to report them in the GST returns arose from a ledger mapping not reviewed, it is not alleged that the non-payment of tax was by reason of fraud, wilful misstatement or suppression of facts to evade tax; and the demand is therefore made under Section 74A(1) with penalty under Section 74A(5)(i). The period of limitation under Section 74A(2) is forty-two months from 31.12.2025, the due date of the annual return, and this notice is issued within it;

9. AND WHEREAS it appears that the Noticee has contravened the following provisions of the CGST Act, 2017 and the CGST Rules, 2017 (and the corresponding provisions of the GGST Act, 2017 and Rules):

- Section 44 read with Rule 80(1) and (3) - failure to furnish the annual return in FORM GSTR-9 and the reconciliation statement in FORM GSTR-9C for FY 2024-25 by 31.12.2025, continuing after the notice under Section 46;
- Section 9(1) and Section 39(1) and (7) - non-payment of tax on the showroom supplies;
- Section 31(1) read with Rule 46 - failure to issue tax invoices;
- Section 37(1) - failure to furnish the details of the showroom supplies in FORM GSTR-1;

10. AND WHEREAS the aforesaid acts and omissions of the Noticee render it liable to:

(a) demand and recovery of tax under Section 74A of the CGST Act, 2017/GGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/GGST Act, 2017;

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017;

(d) late fee under Section 47(2) of the CGST Act, 2017/GGST Act, 2017;

(e) penalty under Section 125 of the CGST Act, 2017/GGST Act, 2017; and

(f) penalty under Section 122(1)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c) above);

NOW, THEREFORE

M/s XXX Industries Pvt. Ltd., through its Managing Director, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the sales of goods of aggregate value of Rs.1,35,00,000/- made through its showroom against estimate bills during FY 2024-25 should not be held to be taxable supplies of goods, on which tax was payable at 18% and which were required to be covered by tax invoices and reported in FORM GSTR-1 and FORM GSTR-3B, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) and (7) of the CGST Act, 2017/GGST Act, 2017;

(ii) an amount of Rs.12,15,000/- (Central tax) and Rs.12,15,000/- (Gujarat State tax), total Rs.24,30,000/- (Rupees Twenty-Four Lakh Thirty Thousand only), being tax not paid on the taxable value of Rs.1,35,00,000/- as detailed in Annexure-A, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered on the tax at (ii) above, month by month from the day after the due date of FORM GSTR-3B for the respective month, till the date of payment;

(iv) a penalty of Rs.1,21,500/- (Central tax) and Rs.1,21,500/- (Gujarat State tax), total Rs.2,43,000/-, being ten per cent of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST

Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8));

(v) the late fee under Section 47(2) of the CGST Act, 2017/GGST Act, 2017 for failure to furnish the annual return for FY 2024-25 by 31.12.2025, accrued at Rs.33,400/- under each Act up to 30.11.2026 and continuing at Rs.100 per day under each Act till the return is furnished, should not be directed to be paid;

(vi) a penalty under Section 125 of the CGST Act, 2017/GGST Act, 2017, not exceeding Rs.25,000/- under each Act, should not be imposed on it for failure to furnish the annual return in FORM GSTR-9 and the reconciliation statement in FORM GSTR-9C for FY 2024-25 despite the notice dated 12.01.2026 under Section 46;

(vii) penalty should not separately be imposed on it under Section 122(1)(i) of the CGST Act, 2017/GGST Act, 2017, in the alternative to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

11. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee may appear through an authorised representative;
- attention is drawn to Section 74A(8) of the CGST Act, 2017/GGST Act, 2017, whereby, on payment of the tax and interest within sixty days of the issue of this notice, no penalty under Section 74A(5) is payable and the proceedings in respect of the said notice are deemed to be concluded; the late fee and any penalty under Section 125 are not covered by that concession;
- the Noticee is called upon to furnish FORM GSTR-9 and FORM GSTR-9C for FY 2024-25 forthwith; furnishing them does not stop this notice, and the late fee continues to accrue until they are furnished;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/GGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Notice dated 12.01.2026 under Section 46 in FORM GSTR-3A, with the portal record of its issue;

RUD-2: Portal print-outs of the returns status of the Noticee for FY 2024-25 (GSTR-1, GSTR-3B filed; GSTR-9, GSTR-9C not filed) as on 31.10.2026;

RUD-3: Reminder letter dated 05.03.2026 of the jurisdictional Superintendent;

RUD-4: Summons dated 20.02.2026 under Section 70, with proof of service;

RUD-5: Audited financial statements for FY 2024-25 (Note 22), trial balance, ERP ledgers 4001 and 4007 and the GST mapping master, as produced on 10.03.2026;

RUD-6: 24 books of estimate bills (1,846 bills) of the factory showroom;

RUD-7: Bank statements of the Noticee's current account for FY 2024-25 (extracts of receipts against ledger 4007);

RUD-8: Statement of Mr. P recorded on 25.03.2026 under Section 70;

RUD-9: Statement of Mr. Z recorded on 26.03.2026 under Section 70;

RUD-10: FORM GST DRC-01A dated 14.07.2026 and the reply of the Noticee dated 29.07.2026;

Annexure-A: Month-wise statement of value, tax and interest [as per the tables in Part B].

(_____)
Deputy/Assistant Commissioner, CGST

Division - [•], Rajkot CGST Commissionerate

Copy to: The Additional/Joint Commissioner, CGST, Rajkot, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Teaching point - what the annual-return default does and does not do.*** *The default (i) attracts a late fee under Section 47(2), which is a fee, not a penalty, and is computed by the portal; (ii) attracts at most a residual penalty under Section 125 (not Section 122, which has no clause on returns); (iii) does not open best-judgment assessment, because Section 62 covers returns under Sections 39 and 45 only; and (iv) does not affect the limitation for the demand, because Section 74A(2) counts forty-two months from the due date of the annual return (31.12.2025), whether or not the return is furnished and whenever it is furnished. Compare Exercise-17, where the annual return was filed and the department worked from the mismatch between GSTR-9 and GSTR-3B; here there is no GSTR-9 and the mismatch was found from the audited accounts.*
- ***Why the missing GSTR-9C matters.*** *A properly completed GSTR-9C reconciles the turnover in the audited accounts with the turnover in the annual return and would have shown the unreconciled Rs.1.35 crore. The return default and the tax default are therefore connected as a matter of evidence, but they are legally distinct: the first is punished by the late fee and Section 125, the second by tax, interest and Section 74A(5). Since 01.08.2021 there is no audit under Section 35(5); the reconciliation is self-certified and only the department's own audit (Section 65/66) tests it.*
- ***Fraud or non-fraud?*** *The route chosen is Section 74A(5)(i), because the sales were in the books and the audited accounts and the cause was a ledger-mapping error. The later holding back of the annual return after noticing the variance does not convert the earlier non-payment into suppression, but it would be a strong point if there were evidence of instructions to avoid invoices. The charge must be supported by the evidence discussed in the body of the notice; compare Exercise-52 (fraud, from specific acts of concealment) and Exercise-02 (non-fraud, ignorance of law).*
- ***Discrepancy with the Master Chart.*** *Template II.A, row 9 lists a penalty 'up to Rs.25,000 under Sec 122' and a total late fee cap of Rs.50,000; row 10 says GSTR-9C 'may trigger audit action under Section 65/66' and cites Section 35(5). These have been corrected: Section 47(2) provides Rs.100 per day under each Act subject to 0.25% of turnover in the State, with no Rs.25,000 cap; the penalty is under Section 125; Section 35(5) no longer exists; and no clause of Section 132(1) makes non-filing of a return an offence, contrary to the Chart's remark that repeated non-compliance 'may attract Section 132'.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.12,15,000/-, so the Deputy/Assistant Commissioner is the competent authority.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 60

Composition dealer fails to pay the composition tax and to furnish CMP-08 for three quarters and GSTR-4 - Sections 10, 39(2), 44, 62 and 74A, Rules 6, 7 and 62

Exercise 60: Composition dealer fails to pay the composition tax and to furnish CMP-08 for three quarters and GSTR-4 - Sections 10, 39(2), 44, 62 and 74A, Rules 6, 7 and 62

Situation in Brief:

1. M/s XXX Traders (hereinafter 'M/s XXX'), a proprietary concern of Mr. Z, having its place of business at YYYY, Jabalpur, Madhya Pradesh, is a registered person engaged in the wholesale and retail trading of hardware, sanitaryware and electrical fittings, all of which are taxable goods. Its aggregate turnover in FY 2024-25 was Rs.1,12,40,000/-. On 20.03.2025 it filed FORM GST CMP-02 and opted to pay tax under Section 10 (the composition levy) with effect from 01.04.2025. It is eligible: its turnover in the preceding year was below Rs.1.5 crore, it makes no inter-State supplies and no supplies through e-commerce operators, and it has no other registration under the same PAN. It issues bills of supply, carries the declaration 'composition taxable person, not eligible to collect tax on supplies' and collects no tax from customers (a check of forty bills of supply confirmed this).

2. For FY 2025-26 M/s XXX was required to furnish a statement in FORM GST CMP-08 and pay the tax for each quarter by the 18th of the month following the quarter [Section 39(2) and (7) read with Rule 62(1)(i) of the CGST Rules, 2017], i.e. on 18.07.2025, 18.10.2025 and 18.01.2026 for the first three quarters, and to furnish the annual return in FORM GSTR-4 by 30.04.2026 [Rule 62(1)(ii)]. The portal shows that M/s XXX filed no CMP-08 and paid nothing for the first three quarters (April to December 2025). It filed CMP-08 for the fourth quarter (January to March 2026) on 17.04.2026, declaring a turnover of Rs.27,80,000/- and paying Rs.27,800/- (Rs.13,900/- each under the CGST and the MP GST Acts). It has not furnished FORM GSTR-4 for FY 2025-26.

3. A notice under Section 46 of the CGST Act, 2017 in FORM GSTR-3A was issued to M/s XXX on 15.05.2026 (Rule 68) for the failure to furnish the statements and the return. There was no response.

4. Analytics of the e-way bill portal and the GST data showed that M/s XXX had generated e-way bills as consignor during the three quarters. A summons dated 10.07.2026 under Section 70 of the CGST Act, 2017 was issued to M/s XXX, calling for the books of supply, the cash book, the stock register, the bank statements and the statements of its UPI merchant account. The documents were produced on 24.07.2026. The turnover was built up from three independent sources, which do not overlap: (a) credit sales to businesses, for which 68 e-way bills were generated by M/s XXX and which were paid into the current account by cheque/RTGS; (b) retail receipts credited to its UPI merchant (QR) account; and (c) cash sales, as per the counterfoils of the bills of supply and the cash book, tallied with the cash deposits in the bank. The purchase side was verified from the portal data of the suppliers (FORM GSTR-1 of fourteen suppliers), which shows purchases of Rs.94,60,000/- by M/s XXX in the three quarters, against sales of Rs.1,02,00,000/-, a gross margin consistent with that of its earlier years. The quarter-wise turnover is as follows:

Quarter	Credit sales with e-way bills (Rs.)	UPI retail receipts (Rs.)	Cash sales (Rs.)	Turnover (Rs.)
Q1 (Apr-Jun 2025)	12,60,000	10,90,000	8,00,000	31,50,000
Q2 (Jul-Sep 2025)	11,40,000	10,10,000	7,90,000	29,40,000
Q3 (Oct-Dec 2025)	15,30,000	14,70,000	11,10,000	41,10,000
TOTAL	**39,30,000**	**35,70,000**	**27,00,000**	**1,02,00,000**

5. The statement of Mr. Z was recorded on 28.07.2026 under Section 70, wherein he accepted the turnover figures; stated that the bills of supply, the cash book and the UPI account are his; that he understood that the composition tax was to be paid only when the annual return was filed, and that he was therefore waiting for April 2026; that he had spent his funds on stock for the festival season; that in April 2026 his consultant told him of the quarterly CMP-08, and he then filed it for the last quarter only; that he did not see the portal notice; and that he cannot pay the whole amount at once and requests instalments. He confirmed that he has collected no tax from any customer and that he has no other business or registration.

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Traders (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Traders (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Traders, calling upon M/s XXX Traders and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX Traders and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX Traders.

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SUGGESTED SOLUTION

(Inquiry on summons, Determination of Composition Tax on Turnover under Section 74A, and Draft Show Cause Notice - M/s XXX Traders, Prop. Mr. Z, Jabalpur CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Madhya Pradesh Goods and Services Tax Act, 2017 [MPGST Act] and the Rules made under the two Acts):

1. **Section 10(1) and (2) of the CGST Act, 2017 read with Rule 7** - non-payment of the composition tax on the turnover of taxable supplies of goods in the State for the three quarters April to December 2025. A supplier of goods who is not a manufacturer pays, in lieu of the tax under Section 9(1), 0.5% of the turnover under the CGST Act and 0.5% under the MPGST Act (1% in all). The option is valid only so long as its conditions are met [Rule 6(1)], and the tax is the price of the option.
2. **Section 39(2) and (7) read with Rule 62(1)(i)** - failure to furnish the statement in FORM GST CMP-08 for each of the three quarters by the 18th of the month following the quarter, and to pay the tax by that date. Section 39(7) requires the tax due as per the return to be paid not later than the last date for furnishing it.
3. **Section 44 and Section 39(2) read with Rule 62(1)(ii)** - failure to furnish the annual return in FORM GSTR-4 for FY 2025-26 by 30.04.2026, continuing after the notice under Section 46.

Note: *The following are not contravened and must not be pleaded: (a) the bar on a composition dealer collecting tax from customers, and Section 76 - no tax was collected; this is the point of difference from Exercise-28; (b) the eligibility conditions of Section 10(2) and Rule 5 (inter-State supply, turnover limit, other registrations) - the dealer was and is eligible; this is the point of difference from Exercise-29; (c) Section 31(3)(c) read with Rule 49 - bills of supply were issued properly. The offence is therefore one of non-payment and non-filing by an eligible composition dealer, and nothing else.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the MPGST Act, 2017):

1. Quantum of the tax - on turnover, at the composition rate - the tax is 0.5% under the CGST Act and 0.5% under the MPGST Act (1% in all) of the turnover of taxable supplies in the State. Three features set it apart from the regular-levy exercises of the series (Exercises 02 and 52): (a) there is *no threshold* - the whole turnover of the quarter is charged, not the part above Rs.20 lakh/Rs.40 lakh, because the composition levy is not a levy under Section 9(1) and the threshold of Section 22(1) has nothing to do with it; (b) *no input tax credit* is available or to be set off - the dealer pays on turnover and not on value added, and the composition provisions bar him from credit; and (c) the rate is *not 18%* - the tax is on the turnover, not on the price of the particular goods, and the goods being traded need not be classified for the purpose. The turnover Rs.1,02,00,000/- yields tax of Rs.51,000/- under each Act (Rs.1,02,000/- in all).
2. Route - Section 62 or Section 74A? Section 62 allows assessment to the best of judgment where a registered person fails to furnish a return under Section 39 even after a notice under Section 46 (here the notice was issued on 15.05.2026). It is available in principle, but the notice under Section 74A is preferred, for four reasons. (a) The order under Section 62 is *deemed to be withdrawn* if the dealer furnishes a valid return within sixty days of service of the order (and for a further sixty days with an additional late fee), though interest and late fee continue [Section 62(2) and proviso]; a dealer who is persuaded to file GSTR-4 in that time can thereby shed the assessment while leaving the tax unpaid, to be recovered afresh as self-assessed tax. (b) Section 62 carries no penalty; Section 74A carries penalty under clause (5). (c) A Section 62 order rests only on the earlier notice under Section 46 and gives the dealer no occasion to explain; the facts here (his statement, an explanation of an honest mistake, the Q4 filing) call for a reasoned adjudication after a hearing. (d) The department has the dealer's turnover

from three independent sources and does not need an assessment *to the best of judgment*; the turnover is established, not guessed. Section 62 remains the quick remedy where the non-filer produces no records at all.

3. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017** (and the MPGST Act). The demand pertains to FY 2025-26, to which Section 74A applies [Section 74A(12) and Notification No. 17/2024-Central Tax dated 27.09.2024]. Limitation: forty-two months from the due date of the annual return for the year [Section 74A(2)]. For a composition dealer the annual return is FORM GSTR-4, due on 30.04.2026 [Rule 62(1)(ii)], so on the cautious view the notice may be issued up to 30.10.2029; if, as some argue, the date of Section 44 and Rule 80 (31.12.2026) were taken, the period would end on 30.06.2030, but the earlier date should be worked to. The order must be passed within twelve months from the notice [Section 74A(7)], extendable by six months. For a best-judgment order under Section 62(1) the period is five years from the date specified under Section 44 for the annual return.

4. Interest - under **Section 50(1)** at 18% per annum, from the day after the due date of the *CMP-08* for each quarter (19.07.2025, 19.10.2025 and 19.01.2026), not from the due date of FORM GSTR-4 (30.04.2026), because the tax is payable on the due date of the statement [Section 39(7)] and the annual return only summarises what has already been paid. Up to 30.11.2026 the interest is Rs.10,044/- under each Act (Rs.20,088/- in all), as worked out below.

5. Penalty - under **Section 74A(5)(i)**: ten per cent of the tax due or Rs.10,000/-, whichever is higher, under each Act. Ten per cent of Rs.51,000/- is Rs.5,100/- which is less than Rs.10,000/-, so the floor applies: Rs.10,000/- under each Act (Rs.20,000/- in all). The charge is *not* one of fraud, wilful misstatement or suppression, and Section 74A(5)(ii) is therefore not invoked: the dealer issued bills of supply for every sale, generated e-way bills in his own name, took the money through his own UPI account and bank account, produced all his records on the first summons, and gave an explanation (that the tax was payable with the annual return) which is wrong but not incredible; his later filing of the Q4 CMP-08 and payment shows a mistake corrected, not a design. The concession of **Section 74A(8)** (no penalty if tax and interest are paid before the notice or within sixty days of it, clauses (i) and (ii)) is available. *Section 74A(11)* withdraws that concession where 'self-assessed tax' in a valid return is not paid within thirty days of the due date; since no CMP-08 was filed for Q1-Q3, no tax was self-assessed and the sub-section is not attracted. Had the dealer filed the CMP-08 and not paid, the concession would have been lost and the unpaid amount could arguably have been recovered under Section 75(12) as self-assessed tax, without a notice.

6. Late fee - the delay in FORM GSTR-4 attracts the late fee of Section 47(1), at the reduced rates notified for FORM GSTR-4; it is computed by the portal and payable when the return is filed, and is proposed to be directed to be paid. (The statutory ceiling is Rs.100 per day, maximum Rs.5,000 under each Act.) No separate late fee is proposed for the CMP-08 statements; the consequence of delay in a CMP-08 is the interest under Section 50(1).

7. Cancellation of the composition option and of the registration - *Rule 6(4)* allows the proper officer, where he has reason to believe that the option was not available or that the dealer has contravened the Act or the Chapter, to issue a notice in FORM GST CMP-05 (reply in FORM CMP-06 within fifteen days), and then to pass an order in FORM CMP-07 within thirty days, accepting the reply or denying the option from the date of the option or of the contravention. Denial would expose the dealer to tax at the normal rate on all his supplies from that date [Section 9(1); and, where ineligibility is established, the penal provision of Section 10(5)], which is out of proportion to a default of Rs.1,02,000/- in tax by an eligible dealer who has resumed payment. It is not proposed; it should be reconsidered if the dealer again defaults. Similarly, a ground for cancellation of registration exists under **Section 29(2)(d)** (a composition dealer who has not furnished returns for three consecutive tax periods) as the Q1, Q2 and Q3 statements are all unfiled; it is not proposed, because the dealer has filed the Q4 statement and the demand will be recovered more easily from a continuing business. Cancellation would not extinguish the liability in any case [Section 29(3)].

8. Penalty on Mr. Z - none is proposed. M/s XXX is a proprietary concern, which has no legal existence apart from Mr. Z, and the one 'person' is addressed (in the same way as in Exercise-52). There is no abetment by a third person.

9. Recovery and instalments - under Sections 78 and 79 if the confirmed amount is not paid in the time

allowed. The request of Mr. Z for payment in instalments will be considered, after the demand is confirmed, under Section 80 read with Rule 158.

10. Prosecution - not attracted. Section 132(1)(d) concerns a person who collects tax and does not pay it; this dealer collected nothing. The amount is also far below the limits in Section 132(1).

Illustrative working of the composition tax proposed to be demanded (0.5% CGST + 0.5% MPGST on turnover, no ITC, no threshold):

Quarter	Turnover (Rs.)	CGST @0.5% (Rs.)	MPGST @0.5% (Rs.)	Total tax (Rs.)
Q1 (Apr-Jun 2025)	31,50,000	15,750	15,750	31,500
Q2 (Jul-Sep 2025)	29,40,000	14,700	14,700	29,400
Q3 (Oct-Dec 2025)	41,10,000	20,550	20,550	41,100
TOTAL	**1,02,00,000**	**51,000**	**51,000**	**1,02,000**

Illustrative working of interest under Section 50(1) (18% per annum, simple, up to 30.11.2026, from the day after the due date of CMP-08):

Quarter	CMP-08 due date	Days to 30.11.2026	Interest - CGST (Rs.)	Interest - CGST + MPGST (Rs.)
Q1 (Apr-Jun 2025)	18.07.2025	500	3,884	7,768
Q2 (Jul-Sep 2025)	18.10.2025	408	2,958	5,916
Q3 (Oct-Dec 2025)	18.01.2026	316	3,202	6,404
TOTAL			**10,044**	**20,088**

Limitation and time-lines:

Item	Working	Result
Due date of CMP-08 (Q1, Q2, Q3)	18th of the month after the quarter, Rule 62(1)(i)	18.07.2025, 18.10.2025, 18.01.2026
Due date of GSTR-4, FY 2025-26	30th April, Rule 62(1)(ii)	30.04.2026
Last date of notice, Section 74A(2)	30.04.2026 + 42 months (cautious view)	30.10.2029
Last date of best-judgment order, Section 62(1)	five years from the date under Section 44	30.04.2031

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Traders, a proprietary concern of Mr. Z, situated at YYYY, Jabalpur, Madhya Pradesh, and Mr. Z, Proprietor of M/s XXX Traders, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX Traders and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Jabalpur CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the supplies of goods of aggregate value of Rs.1,02,00,000/- made by them during April to December 2025 (turnover of the first three quarters of FY 2025-26) should not be held to be supplies on which tax was payable under Section 10(1) and (2) read with Rule 7 and Rule 62(1)(i), and on which the statements in FORM GST CMP-08 were required to be furnished and the tax

paid by 18.07.2025, 18.10.2025 and 18.01.2026 under Section 39(2) and (7) of the CGST Act, 2017/MPGST Act, 2017;

(ii) an amount of Rs.51,000/- (Central tax) and Rs.51,000/- (Madhya Pradesh State tax), total Rs.1,02,000/- (Rupees One Lakh Two Thousand only), being composition tax at 0.5% under each Act on the turnover of Rs.1,02,00,000/-, as detailed in Annexure-A, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from 19.07.2025, 19.10.2025 and 19.01.2026 respectively, till the date of payment;

(iv) a penalty of Rs.10,000/- (Central tax) and Rs.10,000/- (Madhya Pradesh State tax), total Rs.20,000/-, being ten per cent of the tax due or Rs.10,000/- under each Act, whichever is higher, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit available under Section 74A(8));

(v) the late fee under Section 47 of the CGST Act, 2017/MPGST Act, 2017 for failure to furnish the annual return in FORM GSTR-4 for FY 2025-26 by 30.04.2026, as computed on the common portal up to the date of furnishing, should not be directed to be paid.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-JABALPUR

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Jabalpur CGST Commissionerate, Madhya Pradesh

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Madhya Pradesh Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX Traders,
YYYY, Jabalpur, Madhya Pradesh.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX Traders and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS the Noticee, a registered person trading in hardware, sanitaryware and electrical fittings, opted by FORM GST CMP-02 dated 20.03.2025 to pay tax under Section 10 of the CGST Act, 2017 (the composition levy) with effect from 01.04.2025. For FY 2025-26 it was required to furnish the statement in FORM GST CMP-08 and pay the tax by the 18th of the month following each quarter [Section 39(2) and (7) read with Rule 62(1)(i)], and the annual return in FORM GSTR-4 by 30.04.2026 [Rule 62(1)(ii)]. The portal record shows that it furnished no CMP-08 and paid no tax for April to December 2025, filed the CMP-08 for January to March 2026 only on 17.04.2026, and has not furnished the FORM GSTR-4 (RUD-1, RUD-2);

2. AND WHEREAS a notice dated 15.05.2026 under Section 46 of the Act in FORM GSTR-3A was issued to the Noticee for the failure to furnish the statements and the return, but there was no response (RUD-3);

3. AND WHEREAS the analysis of e-way bill and GST data showed that the Noticee had generated e-way bills as consignor in the three quarters (RUD-4); a summons dated 10.07.2026 under Section 70 of the Act was therefore issued to him (RUD-5), in response to which he produced on 24.07.2026 the books of bills of supply, the cash book, the stock register, the bank statements and the statements of his UPI merchant account (RUD-6, RUD-7);

4. AND WHEREAS the turnover of the Noticee, built from three independent sources which do not overlap - credit sales covered by 68 e-way bills paid by cheque/RTGS (RUD-4, RUD-6), retail receipts through his UPI merchant account (RUD-7) and cash sales as per the counterfoils of the bills of supply and the cash book, tallied with cash deposits in the bank (RUD-6) - is Rs.1,02,00,000/- for April to December 2025, as per the quarter-wise statement at Annexure-A. The purchases of Rs.94,60,000/- shown against the Noticee in the FORM GSTR-1 of fourteen suppliers (RUD-8) are consistent with this turnover;

5. AND WHEREAS the statement of the Noticee was recorded on 28.07.2026 under Section 70 (RUD-9), wherein he accepted the turnover; stated that the bills of supply, cash book and UPI account are his; that he believed the composition tax was payable with the annual return; that he used his funds for festival stock; that he filed the CMP-08 for the last quarter only after being told by his consultant in April 2026; and that he did not see the portal notice. He stated that he collected no tax from any customer and requested payment in instalments;

6. AND WHEREAS it appears that the Noticee, an eligible composition dealer, was liable to pay tax at 0.5% under the CGST Act and 0.5% under the MPGST Act on his turnover of taxable supplies of goods in the State [Section 10 read with Rule 7], without input tax credit and without any threshold, i.e. Rs.51,000/- each, total Rs.1,02,000/-, for the three quarters, and that the tax was payable on the due dates of the CMP-08 for the respective quarters [Section 39(7)], and interest is payable from the day following those dates under Section 50(1);

7. AND WHEREAS the Noticee issued bills of supply for his sales, generated e-way bills in his own name, received his receipts in his own bank and UPI accounts and produced all records on the first summons, and the failure to pay appears to have arisen from a mistaken belief about the date of payment and a shortage of funds; it is therefore not alleged that the non-payment was by reason of fraud, wilful misstatement or suppression of facts to evade tax, and penalty is proposed under Section 74A(5)(i) and not Section 74A(5)(ii). The period of limitation under Section 74A(2) is forty-two months from the due date of the annual return, and this notice is issued within it;

8. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 and the CGST Rules, 2017 (and the corresponding provisions of the MPGST Act, 2017 and Rules):

- Section 10(1) and (2) read with Rule 7 - non-payment of the composition tax on turnover for April to December 2025;
- Section 39(2) and (7) read with Rule 62(1)(i) - failure to furnish FORM GST CMP-08 and to pay the tax by the due dates for the three quarters;
- Section 44 and Section 39(2) read with Rule 62(1)(ii) - failure to furnish FORM GSTR-4 for FY 2025-26 by 30.04.2026, continuing after the notice under Section 46;

9. AND WHEREAS the aforesaid acts and omissions of the Noticee render him liable to:

(a) demand and recovery of tax under Section 74A of the CGST Act, 2017/MPGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017;

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017; and

(d) late fee under Section 47 of the CGST Act, 2017/MPGST Act, 2017;

NOW, THEREFORE

M/s XXX Traders, a proprietary concern of Mr. Z, situated at YYYY, Jabalpur, Madhya Pradesh, and Mr. Z, Proprietor of M/s XXX Traders, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Jabalpur CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the supplies of goods of aggregate value of Rs.1,02,00,000/- made by them during April to December 2025 (turnover of the first three quarters of FY 2025-26) should not be held to be supplies on which tax was payable under Section 10(1) and (2) read with Rule 7 and Rule 62(1)(i), and on which the statements in FORM GST CMP-08 were required to be furnished and the tax paid by 18.07.2025, 18.10.2025 and 18.01.2026 under Section 39(2) and (7) of the CGST Act, 2017/MPGST Act, 2017;

(ii) an amount of Rs.51,000/- (Central tax) and Rs.51,000/- (Madhya Pradesh State tax), total Rs.1,02,000/- (Rupees One Lakh Two Thousand only), being composition tax at 0.5% under each Act on the turnover of Rs.1,02,00,000/-, as detailed in Annexure-A, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from 19.07.2025, 19.10.2025 and 19.01.2026 respectively, till the date of payment;

(iv) a penalty of Rs.10,000/- (Central tax) and Rs.10,000/- (Madhya Pradesh State tax), total Rs.20,000/-, being ten per cent of the tax due or Rs.10,000/- under each Act, whichever is higher, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit available under Section 74A(8));

(v) the late fee under Section 47 of the CGST Act, 2017/MPGST Act, 2017 for failure to furnish the annual return in FORM GSTR-4 for FY 2025-26 by 30.04.2026, as computed on the common portal up to the date of furnishing, should not be directed to be paid.

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee may appear in person or through an authorised representative;
- attention is drawn to Section 74A(8) of the CGST Act, 2017/MPGST Act, 2017, whereby, on payment of the tax and interest within sixty days of the issue of this notice, no penalty under Section 74A(5) is payable and the proceedings in respect of the said notice are deemed to be concluded; the late fee is not covered by that concession;
- the Noticee is called upon to furnish FORM GSTR-4 for FY 2025-26 forthwith and to continue to file FORM GST CMP-08 and pay the tax by the 18th of the month following each quarter; his request for instalments will be considered under Section 80 after the demand is determined;
- this notice is issued without prejudice to any other action that may be taken against the Noticee under the CGST Act, 2017/MPGST Act, 2017, including under Rule 6 and Section 29, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GST CMP-02 dated 20.03.2025 and the registration particulars of the Noticee;

RUD-2: Portal print-outs of the return history of the Noticee for FY 2025-26 (CMP-08 for Q4 filed on 17.04.2026; CMP-08 for Q1 to Q3 and GSTR-4 not filed);

RUD-3: Notice dated 15.05.2026 under Section 46 in FORM GSTR-3A;

RUD-4: E-way bill portal data of the 68 e-way bills generated by the Noticee as consignor during April to December 2025;

RUD-5: Summons dated 10.07.2026 under Section 70, with proof of service;

RUD-6: Books of bills of supply, cash book, stock register and bank statements of the current account produced on 24.07.2026;

RUD-7: Statements of the UPI merchant account of the Noticee for April to December 2025;

RUD-8: Purchase-side data (FORM GSTR-1 of fourteen suppliers) showing purchases by the Noticee in April to December 2025;

RUD-9: Statement of Mr. Z recorded on 28.07.2026 under Section 70;

Annexure-A: Quarter-wise statement of turnover, tax and interest [as per the tables in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Jabalpur CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Jabalpur, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Teaching point.*** *The composition dealer's liability is on turnover at the composition rate, from the first rupee, without input tax credit and without any threshold test, and interest runs from the due date of the CMP-08 (the 18th after the quarter), not from the due date of GSTR-4. Compare Exercise-28 (a composition dealer who collected tax from customers - Section 76 and Section 122(1)(iii)/(iv) are then in play) and Exercise-29 (inter-State supplies and crossing the turnover limit - ineligibility, Section 10(5) and Rule 6, and tax at the normal rate on all supplies). Here the dealer is eligible and has collected nothing; the issue is only non-payment and non-filing.*

- ***Section 62 or Section 74A?*** *Best-judgment assessment is a quick measure against a non-filer who has not responded to Section 46: no notice, no hearing and the order is withdrawn if a valid return is filed within sixty days. A notice under Section 74A is slower but gives a lasting, appealable demand with interest and penalty. The choice should be made consciously; when records are produced and the turnover is established from third-party data, as here, Section 74A is the better choice.*
- ***Fraud or non-fraud?*** *Non-fraud (Section 74A(5)(i)) is proposed, since all supplies were documented and the dealer co-operated. The minimum penalty of Rs.10,000/- under each Act applies because ten per cent of the tax is smaller. If he had been caught collecting tax or suppressing sales (as in Exercise-28), the charge would move to Section 74A(5)(ii) with Section 74A(9). Note Section 74A(11): had a CMP-08 been filed but not paid for thirty days, the concessions of Section 74A(8) would be lost.*
- ***Rule 6 and cancellation.*** *Denial of the composition option (CMP-05, CMP-06, CMP-07) and cancellation under Section 29(2)(d) were considered and not proposed as disproportionate; they are the escalation steps if the dealer defaults again.*
- ***Discrepancies with the Master Chart.*** *(a) Template VII.B quotes the rates as 0.5% (manufacturers), 2.5% and 0.5%; these are the central tax rates under Rule 7 and Section 10(1), and the State tax at the same rate is to be added (1% in all for a trader). (b) Template VII.C, row 2 cites Section 44 for GSTR-4, Template II.A, row 3 cites Section 39(2); both are mentioned above. (c) Row C.1 mentions late fee 'under Section 47' for CMP-08; none is proposed here, and the practice of the portal on CMP-08 should be checked before one is claimed.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.51,000/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

***

Exercise 61

Tax deducted at source from contractors' bills but not deposited, and FORM GSTR-7 not filed, by a local authority - Sections 51, 39(3), 47 and 122(1)(v) read with Section 74A and Rule 66

Exercise 61: Tax deducted at source from contractors' bills but not deposited, and FORM GSTR-7 not filed, by a local authority - Sections 51, 39(3), 47 and 122(1)(v) read with Section 74A and Rule 66

Situation in Brief:

1. The XXX City Municipal Corporation (hereinafter 'the Corporation'), a municipal body constituted under the Karnataka Municipal Corporations Act, with its office at YYYY, Belagavi, Karnataka, is a 'local authority' and is registered under Section 24(vi) of the CGST Act, 2017 as a person required to deduct tax at source under Section 51 (GSTIN of the deductor: [•]). Mr. Z is its Commissioner and head of office. Mr. P, Accounts Officer, is its Drawing and Disbursing Officer (DDO) for contractor payments and was responsible for the GST deduction and the monthly return in FORM GSTR-7. The Corporation awards civil, road and drainage works to contractors who are registered in Karnataka; all the contractors and all the works are within Karnataka.

2. From July to December 2025 the Corporation paid its contractors Rs.11,50,00,000/- (excluding GST) against running bills, each under a contract whose value exceeds Rs.2,50,000/-. From each payment it deducted tax at source at 2% (1% central tax and 1% Karnataka State tax) in the bill-passing sheets, and paid the contractors the balance. The contractors were given 'TDS certificates' on the Corporation's letterhead, signed by Mr. P, stating the amounts deducted. The month-wise figures per the Corporation's 'TDS-GST payable' ledger are as follows:

Month	Payments to contractors (Rs.)	TDS - central tax @1% (Rs.)	TDS - State tax @1% (Rs.)	Total TDS (Rs.)
Jul-2025	1,35,00,000	1,35,000	1,35,000	2,70,000
Aug-2025	1,90,00,000	1,90,000	1,90,000	3,80,000
Sep-2025	1,55,00,000	1,55,000	1,55,000	3,10,000
Oct-2025	2,35,00,000	2,35,000	2,35,000	4,70,000
Nov-2025	1,75,00,000	1,75,000	1,75,000	3,50,000
Dec-2025	2,60,00,000	2,60,000	2,60,000	5,20,000
TOTAL	**11,50,00,000**	**11,50,000**	**11,50,000**	**23,00,000**

3. The Corporation filed FORM GSTR-7 and deposited the TDS for April to June 2025 by the due dates. For July to December 2025 it neither deposited the TDS (due by the 10th of the following month) nor filed FORM GSTR-7 (due on the same date). The portal shows 'not filed' for all six months and the electronic cash ledgers of the contractors show no credit for these months.

4. Between 18.09.2025 and 21.11.2025 fourteen contractors, including M/s AAA and M/s BBB Constructions, wrote to the Commissioner and to the jurisdictional CGST Division complaining that the TDS shown in the bill-passing sheets and the Corporation's certificates had not been credited to their electronic cash ledgers, that the system-generated certificate in FORM GSTR-7A could not be downloaded, and that they were having to pay their output tax in full from their own funds. Some of them stated that they had been told by the Accounts Section that 'the TDS will be deposited when the grant comes'.

5. A notice under Section 46 of the CGST Act, 2017 in FORM GSTR-3A was issued to the Corporation on 20.01.2026 (Rule 68) for the non-filing of FORM GSTR-7; there was no reply. A summons dated 10.02.2026 under Section 70 was issued to the Commissioner, calling for the TDS register, the bill-passing sheets, the 'TDS-GST payable' ledger, the bank statements of the Corporation's accounts and the note-sheets relating to the deposit of TDS. The documents were produced on 24.02.2026 by Mr. P. The 'TDS-GST payable' ledger shows a credit balance of Rs.23,00,000/- on 31.12.2025, and no debit. The bank statements show that the TDS amounts were retained in the general 'Municipal Fund' account (no separate account was kept) and that the balance of that account fell below the TDS payable in October 2025 because of the payment of salaries. A note-sheet dated 14.10.2025, signed by Mr. P

and approved by Mr. Z, records the 'temporary utilisation of the TDS-GST balance for payment of September and October salaries pending release of the State grant; to be deposited on receipt of the grant'. The State grant of Rs.18 crore was received on 12.02.2026; none of it has been applied to the TDS. Nothing has been paid to the Government up to 31.10.2026.

6. The statement of Mr. P was recorded on 05.03.2026 under Section 70, wherein he accepted the facts above, stated that GSTR-7 was prepared by him every month but could not be filed without making the payment, that he put the matter before the Commissioner in October 2025, and that the certificates were issued manually because the portal certificate could not be generated without the return. The statement of Mr. Z was recorded on 10.03.2026, wherein he stated that the approval was given to avoid default on staff salaries, that he treated it as a temporary adjustment within the same public fund, that no amount was spent for any personal benefit, and that he did not realise that the contractors' credit was affected.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by the Corporation (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against the Corporation (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to the Corporation, calling upon the Corporation, through its Commissioner, to show cause as to why action should not be taken against it, while listing the proposed action to be taken against it.

(iv) Also prepare the draft Show Cause Notice for issuance to the Corporation.

***

SUGGESTED SOLUTION

(Inquiry on summons, Determination of the Amount in Default under Section 51(7), and Draft Show Cause Notice - XXX City Municipal Corporation, Belagavi CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017 [KGST Act] and the Rules made under the two Acts):

1. **Section 51(2) of the CGST Act, 2017** - failure to pay to the Government, within ten days after the end of the month in which the deduction was made, the amount deducted as tax. The Corporation is a deductor: a 'local authority' is a deductor under Section 51(1) [clause (b)], and the section has been in force since 01.10.2018. The deduction was properly made: each contract exceeds Rs.2,50,000/-, and the supplier and the place of supply are in Karnataka, the State of registration of the deductor, so the proviso to Section 51(1) did not bar the deduction. The deductor is not at fault in making the deduction; its default lies wholly in not paying over what it deducted.
2. **Section 39(3) read with Rule 66** - failure to furnish the return in FORM GSTR-7 for the months of July to December 2025 within ten days after the end of the month in which the deductions were made. A return is due even if the amount is not paid; the Corporation was wrong to hold the return back for want of the payment.
3. **Section 51(3)** (as substituted with effect from 01.01.2021: a certificate of tax deduction at source is to be issued in the form and manner prescribed) - the certificate in FORM GSTR-7A is generated on the common portal only when the return is furnished; since the return was not furnished, no certificate was generated. The Corporation's manual 'TDS certificates' are not the certificate contemplated by the section and give the contractors no credit. [The late fee for failure to give the certificate under the old Section 51(4) was omitted from 01.01.2021 and no longer applies.]

Note: *There is no contravention of the registration provisions: the Corporation is registered under Section 24(vi). It is that registration which makes it a 'taxable person' [Section 2(107): a person who is registered or liable to be registered under Section 22 or Section 24], the person on whom Section 122(1) bites. This is a case of tax deducted but not paid. It is not a case of failure to deduct (Exercise-42, where the default is at the front end) and not a case of tax collected but not paid by the supplier (Exercise-33 under Section 76); clauses (iii)/(iv) and (v) of Section 122(1) are separate clauses, and the demand route and the penalty clause are different.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the Corporation to the following action under the CGST Act, 2017 (read with the corresponding provisions of the KGST Act, 2017):

1. Demand of the amount in default - **Section 51(7)** provides that the determination of the amount in default is to be made in the manner specified in Section 73 or Section 74, and, from 01.11.2024, Section 74A. The amount deducted in July to December 2025 is deducted in FY 2025-26, so Section 74A provides the manner [Section 74A(12); Notification No. 17/2024-Central Tax dated 27.09.2024]: show cause notice, hearing and order, with time limits. The amount in default is Rs.11,50,000/- under each Act (Rs.23,00,000/- in all).
2. Limitation - Section 74A(2) allows a notice within forty-two months from the due date of the annual return for the financial year. *A deductor does not furnish an annual return*: persons who deduct tax under Section 51 are excluded from Section 44(1) and Rule 80, so the statutory reference date is missing. The safe course is to count the period from the earliest date that could be adopted, the due date of each GSTR-7, i.e. from 10.08.2025 for July 2025 (forty-two months ending 10.02.2029), and not from an annual-return date that does not exist. The notice in November 2026 is within time on any view. The order must be passed within twelve months of the notice [Section 74A(7)], extendable by six months.
3. Interest - under **Section 51(6)**, the deductor who fails to pay the amount deducted must pay interest *in*

accordance with Section 50(1), in addition to the amount of tax deducted. Section 51(6) borrows the rate of Section 50(1), i.e. 18% per annum; the higher rate of Section 50(3) (24%) applies only to ITC wrongly availed and utilised and is not relevant. Interest runs on each month's deduction from the day after the due date of payment (the 11th of the following month) till payment, and not from the date of deduction (which is how Section 76(4) works for tax collected, as in Exercise-33). Up to 30.11.2026 it is Rs.2,22,142/- under each Act (Rs.4,44,284/- in all), as worked out below. It is a charge on the deductor, i.e. on the public fund; the contractors are not charged.

4. Penalty - under **Section 122(1)(v)** of the CGST Act, 2017 (and the corresponding provision of the KGST Act): a taxable person who fails to deduct tax in accordance with Section 51(1), or deducts less than the amount required, or 'fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax', is liable to a penalty of Rs.10,000/- or an amount equivalent to the tax deducted but not paid to the Government, whichever is higher. The penalty is therefore Rs.11,50,000/- under each Act (Rs.23,00,000/- in all). A separate penalty under Section 74A(5) is not proposed: Section 51(7) takes the *manner* (procedure) of Section 74A, and the specific penalty for this default is in Section 122(1)(v); to charge both for the same default would offend Section 75(13) (no double penalty). The Corporation is not immune because it is a public body: a local authority is a 'person' under Section 2(84), the Government itself is one too [clause (k)], and nothing in Section 122(1)(v) or Section 126 excludes either. Whether the full measure should be imposed on a public fund is for the adjudicating authority, who must apply Section 126 (penalty to be commensurate with the degree and severity of the breach, hearing to be given). The concessions of Section 74A(8) are arguably available because the manner of determination is that of Section 74A; the notice mentions them without prejudice.

5. Late fee for GSTR-7 - under **Section 47(1)**, at the rate notified for FORM GSTR-7 by Notification No. 22/2021-Central Tax dated 01.06.2021: Rs.25 per day under each Act (Rs.50 per day in all), subject to a maximum of Rs.1,000 under each Act for each return. Each of the six returns is more than forty days late, so the maximum has been reached for each: Rs.1,000 x 6 = Rs.6,000/- under each Act (Rs.12,000/- in all), payable on furnishing the returns. The statutory ceiling without the notification is Rs.100 per day and Rs.5,000 under each Act.

6. Who is charged? The deductor entity, and not the officers personally - the registered person who deducted and who defaulted is the Corporation. A notice to a local authority is addressed to the Corporation 'through the Commissioner', who is its head of office and the authorised signatory of its registration; the Accounts Officer (DDO) is shown as the officer who prepared and handled the TDS. For a State Government department the notice is addressed to the department/Government of Karnataka, through the head of department and the DDO; the Government is a 'person' and its liability is no different. Personal penalty on Mr. Z and Mr. P under **Section 122(3)(a)** (aiding or abetting an offence under Section 122(1)(v)) is *not proposed*: the diversion was a decision of the competent authority of a public body, recorded on the note-sheet and made for salaries, with no personal gain, and the officers acted in their official capacity. The position may be re-examined if evidence of personal gain or concealment emerges, in a separate notice. Compare Exercise-33, where the Managing Director's own decision to withhold the money and his personal control of the funds justified a penalty under Section 122(3)(a).

7. The contractors' complaints - the contractors are not charged and no demand is made on them. Under **Section 51(5)** the deductee claims credit in his electronic cash ledger of the tax deducted *as reflected in the return of the deductor*; no GSTR-7 means no credit, and the certificate in FORM GSTR-7A cannot be generated. The Corporation's manual certificates give no credit. The department cannot credit the contractors' ledgers until the Corporation files GSTR-7; once it does, the credit flows to the contractors on the basis of the return (and, if the portal so requires, on the deductee's acceptance of the TDS). The contractors' output tax liability is unaffected by the Corporation's default; they have paid the output tax from their own funds, and their loss is the funds blocked for a period; the department's recovery of interest from the deductor under Section 51(6) is the remedy for the Government's loss, and the complaints are used as evidence of the non-credit and of the knowledge of the Corporation.

8. Recovery - under Sections 78 and 79 if the confirmed amount is not paid in the time allowed. For a local authority, recovery by attachment of its bank account is a measure of last resort; it is sensible to inform the State Government (Urban Development Department) so that the amount can be paid from the

grant or adjusted. Provisional attachment under Section 83 is not warranted: the Corporation has admitted the facts and the money is not likely to be dissipated.

9. Prosecution - not proposed. Section 132(1)(d) speaks of a person who 'collects any amount as tax' and does not pay it; no clause of Section 132(1) refers to TDS default as such, and the amount (Rs.23,00,000/- in all) is, in any case, below the monetary limits of Section 132(1).

Illustrative working of the amount in default (tax deducted but not paid, Section 51(2)):

Month of deduction	Payments (Rs.)	Central tax @1% (Rs.)	KGST @1% (Rs.)	Total (Rs.)
Jul-2025	1,35,00,000	1,35,000	1,35,000	2,70,000
Aug-2025	1,90,00,000	1,90,000	1,90,000	3,80,000
Sep-2025	1,55,00,000	1,55,000	1,55,000	3,10,000
Oct-2025	2,35,00,000	2,35,000	2,35,000	4,70,000
Nov-2025	1,75,00,000	1,75,000	1,75,000	3,50,000
Dec-2025	2,60,00,000	2,60,000	2,60,000	5,20,000
TOTAL	**11,50,00,000**	**11,50,000**	**11,50,000**	**23,00,000**

Illustrative working of interest under Section 51(6) read with Section 50(1) (18% per annum, simple, from the 11th of the following month up to 30.11.2026):

Month	Payment due date	Days to 30.11.2026	Interest - central (Rs.)	Interest - central + KGST (Rs.)
Jul-2025	10.08.2025	477	31,756	63,512
Aug-2025	10.09.2025	446	41,790	83,580
Sep-2025	10.10.2025	416	31,798	63,596
Oct-2025	10.11.2025	385	44,618	89,236
Nov-2025	10.12.2025	355	30,637	61,274
Dec-2025	10.01.2026	324	41,543	83,086
TOTAL			**2,22,142**	**4,44,284**

Late fee for FORM GSTR-7 (Rs.25 per day under each Act, maximum Rs.1,000 under each Act per return):

Month	GSTR-7 due date	Days late to 30.11.2026	Late fee - central (Rs.)	Late fee - KGST (Rs.)
Jul-2025	10.08.2025	477	1,000	1,000
Aug-2025	10.09.2025	446	1,000	1,000
Sep-2025	10.10.2025	416	1,000	1,000
Oct-2025	10.11.2025	385	1,000	1,000
Nov-2025	10.12.2025	355	1,000	1,000
Dec-2025	10.01.2026	324	1,000	1,000
TOTAL			**6,000**	**6,000**

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, the XXX City Municipal Corporation, YYYY, Belagavi, Karnataka, a local authority registered as a tax deductor under Section 24(vi) of the CGST Act, 2017 (GSTIN [•]), through Mr. Z, Commissioner and head of office, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Belagavi CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the amounts of Rs.11,50,000/- (central tax) and Rs.11,50,000/- (Karnataka State tax), total Rs.23,00,000/-, deducted as tax at source at 2% from payments of Rs.11,50,00,000/- made to contractors during July to December 2025, should not be held to be amounts deducted under Section 51(1) and not paid to the Government within ten days after the end of the respective month, in contravention of Section 51(2) of the CGST Act, 2017/KGST Act, 2017;

(ii) the amount in default of Rs.11,50,000/- (central tax) and Rs.11,50,000/- (Karnataka State tax), total Rs.23,00,000/- (Rupees Twenty-Three Lakh only), as detailed in Annexure-A, should not be determined in the manner specified in Section 74A, as provided by Section 51(7) of the CGST Act, 2017, and the corresponding provisions of the KGST Act, 2017, and should not be demanded and recovered from it;

(iii) interest under Section 51(6) read with Section 50(1) of the CGST Act, 2017/KGST Act, 2017 should not be charged and recovered on the amount at (ii) above, month by month from the 11th day of the month following the month of deduction, till the date of payment;

(iv) a penalty of Rs.11,50,000/- (central tax) and Rs.11,50,000/- (Karnataka State tax), total Rs.23,00,000/-, being the amount of tax deducted but not paid to the Government, should not be imposed on it under Section 122(1)(v) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit, if any, of Section 74A(8) and subject to Section 126);

(v) the late fee under Section 47 of the CGST Act, 2017/KGST Act, 2017 for failure to furnish FORM GSTR-7 for the months of July to December 2025, being Rs.6,000/- (Rs.25 per day, maximum Rs.1,000 per return) under each Act, should not be directed to be paid on furnishing the returns.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-BELAGAVI

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Belagavi CGST Commissionerate, Karnataka

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 51(7) read with Section 74A of the Central Goods and Services Tax Act, 2017 and the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017)

To,
The XXX City Municipal Corporation,
(through Mr. Z, Commissioner and head of office),
YYYY, Belagavi, Karnataka.

(hereinafter referred to as 'the Noticee' or 'the Corporation')

WHEREAS the Corporation is a local authority and a person required to deduct tax at source under Section 51(1) of the CGST Act, 2017, registered under Section 24(vi) (GSTIN [●]). Mr. Z is its Commissioner and head of office, and Mr. P, Accounts Officer, is its Drawing and Disbursing Officer for contractor payments. The Corporation filed FORM GSTR-7 and deposited the tax deducted for April to June 2025, but for July to December 2025 it neither deposited the tax deducted nor furnished FORM GSTR-7 (RUD-1);

2. AND WHEREAS the Corporation paid its contractors Rs.11,50,00,000/- (excluding GST) during July to December 2025 against bills under contracts each exceeding Rs.2,50,000/-, in Karnataka, and deducted tax at source at 2% (1% central tax and 1% Karnataka State tax), i.e. Rs.11,50,000/- each, total Rs.23,00,000/-, as per the TDS register, the bill-passing sheets and the 'TDS-GST payable' ledger (RUD-2, RUD-3). The Corporation issued manual 'TDS certificates' to the contractors (RUD-4);

3. AND WHEREAS fourteen contractors complained in writing between 18.09.2025 and 21.11.2025 that no credit of the tax deducted was reflected in their electronic cash ledgers and that the certificate in FORM GSTR-7A could not be downloaded (RUD-5). A notice dated 20.01.2026 under Section 46 in FORM GSTR-3A to the Corporation for the non-filing of FORM GSTR-7 received no reply (RUD-6);

4. AND WHEREAS a summons dated 10.02.2026 under Section 70 of the Act was issued to the Commissioner (RUD-7), in response to which Mr. P produced on 24.02.2026 the TDS register, the bill-passing sheets, the 'TDS-GST payable' ledger, the bank statements and the note-sheets (RUD-2, RUD-3, RUD-8). The ledger shows a credit balance of Rs.23,00,000/- on 31.12.2025 and no debit; the bank statements show that the amounts were retained in the general 'Municipal Fund' account and that its balance fell below the amount payable in October 2025 on payment of salaries; and a note-sheet dated 14.10.2025, signed by Mr. P and approved by Mr. Z, records the 'temporary utilisation of the TDS-GST balance for payment of September and October salaries pending release of the State grant' (RUD-9). The State grant of Rs.18 crore was received on 12.02.2026, but nothing has been paid to the Government up to 31.10.2026 (RUD-10);

5. AND WHEREAS the statements of Mr. P (05.03.2026) and Mr. Z (10.03.2026) were recorded under Section 70 (RUD-11, RUD-12), wherein they accepted the above facts, stated that the return could not be filed without making the payment, that the approval was given to avoid default on salaries, and that they did not realise that the contractors' credit would be affected;

6. AND WHEREAS under Section 51(2) the amount deducted is to be paid to the Government within ten days after the end of the month in which it was deducted, and under Section 39(3) read with Rule 66 the return in FORM GSTR-7 is to be furnished within the same period; the credit of the tax deducted to the deductee arises under Section 51(5) only on the basis of the return furnished by the deductor, and consequently the contractors have been denied the credit of Rs.23,00,000/- in all, because of the Corporation's default;

7. AND WHEREAS it appears that the Corporation has contravened the following provisions of the CGST Act, 2017 and the CGST Rules, 2017 (and the corresponding provisions of the KGST Act, 2017 and Rules):

- Section 51(2) - failure to pay to the Government the amount deducted as tax, for July to December 2025;
- Section 39(3) read with Rule 66 - failure to furnish FORM GSTR-7 for July to December 2025;
- Section 51(3) - consequent non-availability of the certificate in FORM GSTR-7A to the deductees;

8. AND WHEREAS the Corporation, being a person registered under Section 24(vi), is a taxable person within the meaning of Section 2(107), and the aforesaid failure renders it liable to:

(a) determination and recovery of the amount in default under Section 51(7) read with Section 74A of the CGST Act, 2017/KGST Act, 2017;

(b) interest under Section 51(6) read with Section 50(1) of the CGST Act, 2017/KGST Act, 2017;

(c) penalty under Section 122(1)(v) of the CGST Act, 2017/KGST Act, 2017; and

(d) late fee under Section 47 of the CGST Act, 2017/KGST Act, 2017;

NOW, THEREFORE

the XXX City Municipal Corporation, YYYY, Belagavi, Karnataka, through Mr. Z, Commissioner and head of office, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Belagavi CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the amounts of Rs.11,50,000/- (central tax) and Rs.11,50,000/- (Karnataka State tax), total Rs.23,00,000/-, deducted as tax at source at 2% from payments of Rs.11,50,00,000/- made to contractors during July to December 2025, should not be held to be amounts deducted under Section 51(1) and not paid to the Government within ten days after the end of the respective month, in contravention of Section 51(2) of the CGST Act, 2017/KGST Act, 2017;

(ii) the amount in default of Rs.11,50,000/- (central tax) and Rs.11,50,000/- (Karnataka State tax), total Rs.23,00,000/- (Rupees Twenty-Three Lakh only), as detailed in Annexure-A, should not be determined in the manner specified in Section 74A, as provided by Section 51(7) of the CGST Act, 2017, and the corresponding provisions of the KGST Act, 2017, and should not be demanded and recovered from it;

(iii) interest under Section 51(6) read with Section 50(1) of the CGST Act, 2017/KGST Act, 2017 should not be charged and recovered on the amount at (ii) above, month by month from the 11th day of the month following the month of deduction, till the date of payment;

(iv) a penalty of Rs.11,50,000/- (central tax) and Rs.11,50,000/- (Karnataka State tax), total Rs.23,00,000/-, being the amount of tax deducted but not paid to the Government, should not be imposed on it under Section 122(1)(v) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit, if any, of Section 74A(8) and subject to Section 126);

(v) the late fee under Section 47 of the CGST Act, 2017/KGST Act, 2017 for failure to furnish FORM GSTR-7 for the months of July to December 2025, being Rs.6,000/- (Rs.25 per day, maximum Rs.1,000 per return) under each Act, should not be directed to be paid on furnishing the returns.

9. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee may appear through the Commissioner or an authorised officer;
- the Noticee is called upon to deposit the amount deducted along with interest and to furnish FORM GSTR-7 for July to December 2025 forthwith, whereupon the contractors will get the credit under

Section 51(5); the deposit before the issue of this notice or within sixty days of it will be considered with the benefit, if any, of Section 74A(8); the late fee is not covered by that benefit;

- this notice is addressed to the Corporation in its capacity as the deductor; no personal liability is proposed on any officer by this notice, which is without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/KGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Portal record of the registration of the Noticee under Section 24(vi) and of the status of FORM GSTR-7 (filed for April to June 2025; not filed for July to December 2025) as on 31.10.2026;

RUD-2: TDS register of the Corporation for July to December 2025;

RUD-3: Bill-passing sheets and the 'TDS-GST payable' ledger (credit balance Rs.23,00,000/- on 31.12.2025);

RUD-4: Specimen manual 'TDS certificates' issued by the Corporation to contractors;

RUD-5: Letters of fourteen contractors dated 18.09.2025 to 21.11.2025;

RUD-6: Notice dated 20.01.2026 under Section 46 in FORM GSTR-3A;

RUD-7: Summons dated 10.02.2026 under Section 70, with proof of service;

RUD-8: Bank statements of the Municipal Fund account for July 2025 to January 2026;

RUD-9: Note-sheet dated 14.10.2025 on temporary utilisation of the TDS-GST balance;

RUD-10: Record of receipt of the State grant of Rs.18 crore on 12.02.2026 and the statement of the Noticee's accounts up to 31.10.2026;

RUD-11: Statement of Mr. P recorded on 05.03.2026 under Section 70;

RUD-12: Statement of Mr. Z recorded on 10.03.2026 under Section 70;

Annexure-A: Month-wise statement of the amount in default, interest and late fee [as per the tables in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Belagavi CGST Commissionerate

Copy to: (1) The Principal Secretary, Urban Development Department, Government of Karnataka, for information; (2) The Additional/Joint Commissioner, CGST, Belagavi, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. Mr. Z (Commissioner) and Mr. P (DDO) are fictional.*
- ***Teaching point - the deductor, not the officer, is the charged person.*** *The person liable under Sections 51 and 122(1)(v) is the registered deductor, here a local authority; the notice is addressed to the entity through its head of office. Officers who act in an official capacity and without personal gain are not penalised under Section 122(3); that is the contrast with Exercise-33 (private company, Managing Director who decided to withhold). The notice also deals with the contractors' complaints: the contractors are not charged, they get credit only when GSTR-7 is filed (Section 51(5)), and their complaints are evidence. Compare Exercise-42 (failure to deduct) - there the default is at the deduction stage and the contractors are not affected in the same way.*
- ***Which interest and which penalty?*** *Section 51(6) takes interest at the Section 50(1) rate (18%), from the day after the deposit date (the 11th of the next month), unlike Section 76(4) (from collection, Exercise-33) and unlike Section 50(3) (24%, ITC). The penalty is Section 122(1)(v) (equal to the amount deducted and not paid, minimum Rs.10,000), not Section 74A(5); Section 51(7) borrows the manner of determination*

(notice, hearing, order, time limits) from Section 74A and the specific penalty comes from Section 122(1)(v). A separate Section 74A(5) penalty would amount to a double penalty (Section 75(13)).

- ***Limitation without an annual return.*** *Section 74A(2) counts from the due date of the annual return, but a deductor is excluded from Section 44 and has no annual return. The draft therefore works to the earliest GSTR-7 due date (forty-two months from 10.08.2025 = 10.02.2029) as the safe reference. The point is academic here, but it should be recorded in any such notice file.*
- ***If the deductor is a Government department*** *(and not a local authority), the notice is addressed to the State Government through the head of department and the DDO; the Government is a 'person' (Section 2(84)) and no exemption is given from Section 51 or Section 122(1)(v). Recovery should be coordinated with the Finance Department. For a PSU registered as a deductor the same approach is used; its listing as a deductor depends on the notification in force.*
- ***Discrepancies with the Master Chart.*** *Template IV, row 7 cites 'Section 51(1) & (2) r/w rule 67' for the TDS default, and row 8 cites 'Rule 66' for tax collected at source under Section 52; the rule numbers are reversed - Rule 66 is the TDS return (FORM GSTR-7) and Rule 67 the TCS statement (FORM GSTR-8). Row 7 also needs the addition of Section 74A (done by Section 51(7) from 01.11.2024). Template II.A, row 7 gives the late fee of GSTR-7 as Rs.100 per day, maximum Rs.5,000; this is the statutory ceiling under Section 47(1), but the notified rate is Rs.25 per day under each Act, maximum Rs.1,000, since June 2021.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax involved is Rs.11,50,000/-, above Rs.10 lakh, so the Deputy/Assistant Commissioner is the competent authority.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 62

Failure by a Sub-Registrar to furnish the information return called for by notice under Section 150(3) - penalty-only notice under Section 123 (no tax involved)

Exercise 62: Failure by a Sub-Registrar to furnish the information return called for by notice under Section 150(3) - penalty-only notice under Section 123 (no tax involved)

Situation in Brief:

1. Under Section 150(1) of the CGST Act, 2017, certain public authorities and other persons who maintain records of transactions are obliged to furnish an 'information return'; clause (g) names 'the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908'. The Sub-Registrar's Office, [locality], Bengaluru, Karnataka, registers sale deeds, agreements of sale and conveyances of immovable property in the area of Bengaluru West. Mr. P held charge of the office as Sub-Registrar from 01.04.2024 to 30.06.2026; Mr. Z took over on 01.07.2026 and is the present Sub-Registrar.

2. The Bengaluru West CGST Commissionerate needed the particulars of the registered transfers of immovable property for FY 2024-25 (name and PAN of the parties, description and address of the property, consideration, stamp duty and date of registration, for documents with consideration of Rs.30 lakh or more) in order to cross-check the turnover declared by builders and developers in their GST returns. The information return for FY 2024-25 was due on 30.06.2025 in the form and manner prescribed for the purpose [the Rule/Notification particulars are to be inserted by the issuing officer after verification - see Drafting Note 5]. Nothing was furnished by the due date, and an e-mail reminder of 02.07.2025 went unanswered.

3. A notice dated 03.07.2025 (F. No. GEXCOM/INV/INFO/12/2025-BLR-W) was therefore issued by the Joint Commissioner (Anti-Evasion), authorised for the purpose by the Commissioner, under Section 150(3) of the CGST Act, 2017 read with the corresponding provision of the Karnataka Goods and Services Tax Act, 2017 [KGST Act]. It required Mr. P, as the Sub-Registrar, to furnish the information return for FY 2024-25 'within sixty (60) days from the date of service of this notice' and stated that a penalty of Rs.100 for each day of continuing failure would be liable to be imposed under Section 123. The notice was delivered at the office by speed post and e-mail, and the acknowledgement of the Office bears the date **07.07.2025**.

4. On 01.09.2025 Mr. P replied that the registration data are held on the central server of the State Registration Department, that extraction needs the approval of the Inspector General of Registration and Commissioner of Stamps, and that a further three months be allowed. The Department replied on 04.09.2025 that the time stated in the notice was not being extended and that the return was to be furnished by 05.09.2025. Reminders of 15.10.2025 and 10.12.2025 were not answered, and no return was furnished.

5. On 18.02.2026, after the matter was taken up by the Principal Secretary (Revenue) of the State with the Inspector General of Registration, the information return in the prescribed format was furnished through Mr. P and accepted by the Department without any defect being pointed out under Section 150(2). No tax, interest or refund is involved. The Office has not given any explanation for the delay other than that stated in paragraph 4. A statement of Mr. P was recorded on 12.03.2026 under Section 70, wherein he admitted receipt of the notice on 07.07.2025, stated that he had forwarded it to the Inspector General on 10.07.2025 and 12.08.2025 and had no authority to release the data on his own, and that he did not furnish any partial return.

6. Mr. P was transferred out on 30.06.2026. The proper officer now proposes to take action under Section 123. A table of the days of the default is given below, counted from the day after the expiry of the time allowed by the notice up to the day before the return was furnished:

Period of default	Days	Cumulative days	Rs.100 per day (Rs.)	Allowed within the cap (Rs.)
06.09.2025 to 30.09.2025	25	25	2,500	2,500
01.10.2025 to 31.10.2025	31	56	3,100	2,500
01.11.2025 to 30.11.2025	30	86	3,000	0
01.12.2025 to 31.12.2025	31	117	3,100	0
01.01.2026 to 31.01.2026	31	148	3,100	0

Period of default	Days	Cumulative days	Rs.100 per day (Rs.)	Allowed within the cap (Rs.)
01.02.2026 to 17.02.2026	17	165	1,700	0
TOTAL	**165**	**165**	**16,500**	**5,000**

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by the Sub-Registrar, Bengaluru (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued, calling upon the Sub-Registrar to show cause as to why action should not be taken, while listing the proposed action, and state in what capacity and against whom the notice should be issued.

(iv) Also prepare the draft Show Cause Notice for issuance.

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SUGGESTED SOLUTION

(Penalty-only proceedings under Section 123 read with Section 150, and Draft Show Cause Notice - Sub-Registrar, Bengaluru, Bengaluru West CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017 [KGST Act] and the Rules made under the two Acts):

1. **Section 150(1)(g) of the CGST Act, 2017** - the Sub-Registrar appointed under Section 6 of the Registration Act, 1908 is a person who is required to furnish an information return, for the prescribed period, within the prescribed time, in the prescribed form and manner and to the prescribed authority. The return for FY 2024-25 was not furnished by the due date of 30.06.2025.
2. **Section 150(3) of the CGST Act, 2017** - after the notice served on 07.07.2025, the return was required to be furnished within a period which, by the sub-section itself, cannot exceed ninety days from the service of the notice; the notice allowed sixty days, i.e. up to **05.09.2025**. The return was furnished only on 18.02.2026, so that the failure continued for 165 days (06.09.2025 to 17.02.2026).

Note: *This is a purely procedural contravention. No tax is involved: the information return is a source of data for the Department and does not relate to any liability of the Sub-Registrar. Sections 9, 50, 73/74/74A and 76 are therefore not attracted, and nothing in this exercise is a demand. Section 124 (fine for failure to furnish statistics) is not attracted, because the call was made under Section 150 and not under Section 151 (see the Drafting Notes).*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contravention at (A) above exposes the person required to furnish the return to the following action under the CGST Act, 2017 (read with the corresponding provisions of the KGST Act, 2017):

1. Nature of the proceedings - a penalty-only proceeding. There is no tax, no interest and no demand under Section 74A (or 73/74). The notice is issued under **Section 123** and the corresponding provision of the KGST Act. The Chart (Template II.A, row 13) lists only 'penalty u/sec 123 - Rs.100/day for each day of the period during which failure continues' and this is the correct section; the general penalty under Section 125 is a residuary provision which applies only where no penalty is separately provided, and Section 123 provides one.
2. Penalty - under **Section 123**: where a person required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under Section 150(3), the proper officer 'may direct' that he shall be liable to a penalty of Rs.100 for each day of the period during which the failure continues. The **proviso** to Section 123 caps the penalty at **Rs.5,000**. The Chart omits this cap. The working is as follows: 165 days x Rs.100 = Rs.16,500 on the uncapped basis; the cap of Rs.5,000 is reached on the 50th day of default, i.e. on **25.10.2025**, and no further penalty accrues for the remaining 115 days. The penalty proposed is Rs.5,000 under the CGST Act and the corresponding Rs.5,000 under Section 123 of the KGST Act, total Rs.10,000/-.
3. Why the dates of the earlier notice matter - the daily penalty runs only from the day after the period specified in the Section 150(3) notice. That period is counted from the date of service (07.07.2025), and not from the date of the notice (03.07.2025): counting from 03.07.2025 would have given 01.09.2025 and added four more days of default. A notice that gave more than ninety days would be beyond Section 150(3). Because the penalty is a function of days, the show cause notice must reproduce the Section 150(3) notice (number, date, service, period allowed) and state the first and last day of the default. In this case the cap makes the exact end date of the default immaterial to the amount, but it is still required to be stated, because the penalty begins and ends on those dates and because the cap is a proviso on a penalty that is otherwise day-wise.
4. Who is the 'person' charged - Section 123 speaks of 'a person who is required to furnish an information return', and Section 150(1)(g) names the Registrar or Sub-Registrar appointed under Section 6 of the Registration Act, i.e. a statutory authority and not a taxpayer. The notice is therefore issued to **the Sub-**

Registrar, Sub-Registrar's Office, [locality], Bengaluru, in his official capacity as the person specified in Section 150(1)(g). The incumbent at the time of issue (Mr. Z) is addressed because it is the Sub-Registrar for the time being who answers for the office; the incumbent during the default (Mr. P) is given notice of the proceedings as a person whose acts are in question and is invited to explain the circumstances, since only he can speak to the period of default; the notice is not issued to Mr. P personally as a penalty on him. No penalty on any individual is proposed, and a copy goes to the Inspector General of Registration and Commissioner of Stamps for the State Government, to whose accounts any penalty will in effect be debited. (The position that the penalty is imposed on the office-holder in his official capacity has been adopted on a reading of Sections 123 and 150(1)(g); no judicial authority was located on the point - see the Drafting Notes.)

5. Show cause and Section 126 - Section 123 says that the proper officer 'may direct'; it does not itself prescribe a hearing. Section 126(3) says that no penalty shall be imposed without giving the person an opportunity of being heard. At the same time, Section 126(6) provides that Section 126 does not apply where the penalty specified in the Act is a fixed sum or a fixed percentage, and a penalty of Rs.100 per day is arguably a fixed sum, so that the minor-breach rule of Section 126(1) (no penalty where the tax involved is less than Rs.5,000 - here the tax involved is nil) would also be excluded. The notice does not rest on the assumption that Section 126 applies or does not apply: it follows Section 126(3) and the principles of natural justice (and, by analogy, Section 75(4)) and grants a reasoned opportunity of being heard, a written reply and a personal hearing. It is the cap and the explanation of the delay, and not any argument on tax, which the Noticee will address.

6. Limitation - no period of limitation for a penalty-only notice under Section 123 is prescribed (the Chart also records that no specific limitation is prescribed for a standalone penalty). The notice should nevertheless be issued within a reasonable time; here, it is issued about nine months after the return was furnished.

7. Recovery - a penalty on a public authority is not enforced by attachment. After the order, payment is sought through the Inspector General of Registration and the State Government (the practice is a matter of administrative arrangement, not of any provision of the Act - not verified), with Sections 78 and 79 in reserve.

8. Alternatives considered and not adopted - (a) **Section 122(1)(xvii)** (failure to furnish information or documents called for by an officer): its penalty is the higher of Rs.10,000 and the tax evaded under the opening words of Section 122(1) (the Chart's 'up to Rs.25,000' for this clause is the ceiling of Section 122(3), not of Section 122(1)), and invoking it would duplicate the specific scheme of Sections 150 and 123 and invite an objection on Section 75(13); it is not proposed. (b) **Section 125** (general penalty up to Rs.25,000): not available because Section 123 specifically provides the penalty. (c) **Section 124** (fine up to Rs.10,000 and further Rs.100 for each day after the first day, subject to a maximum of Rs.25,000, for failure without reasonable cause to furnish information or return called for under Section 151, or for wilfully furnishing false information): it is a fine for the offence of defying a call made under Section 151 (statistics) and not under Section 150; the call here was made under Section 150, so Section 124 is not attracted. (d) **Prosecution under Section 132**: none of the clauses of Section 132(1) covers the failure to furnish an information return, and the former clause (k) (failure to supply information) was decriminalised from 01.10.2023 (so recorded in Template XI).

Illustrative working of the penalty proposed:

Particulars	Dates / days	Amount (Rs.)
Section 150(3) notice dated 03.07.2025, served	07.07.2025	-
Time allowed: 60 days from service (not exceeding 90 days)	up to 05.09.2025	-
First day of default	06.09.2025	-
Return furnished	18.02.2026	-
Last day of default	17.02.2026	-
Days of default	165 days	-

Particulars	Dates / days	Amount (Rs.)
Penalty at Rs.100 per day, uncapped (165 x 100)	Section 123	16,500
Day on which the cap of Rs.5,000 is reached (day 50)	25.10.2025	-
Penalty proposed under the CGST Act (proviso to Section 123)	Cap Rs.5,000	5,000
Penalty proposed under the KGST Act (corresponding provision)	Cap Rs.5,000	5,000
TOTAL penalty proposed		**10,000**

Basis: *The day of service is excluded and the last day of the 60-day period (05.09.2025) is a day on which the return could still have been furnished in time; default begins on 06.09.2025. The day on which the return was furnished (18.02.2026) is not a day of default.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, the Sub-Registrar, Sub-Registrar's Office, [locality], Bengaluru, Karnataka, being the person specified in Section 150(1)(g) of the CGST Act, 2017 and required to furnish the information return, represented by Mr. Z, the Sub-Registrar for the time being, in his official capacity only (and not in his personal capacity), is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Bengaluru West CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the information return for FY 2024-25 should not be held to have been furnished late, in contravention of Section 150(1)(g) and Section 150(3) of the CGST Act, 2017/KGST Act, 2017, the failure having continued for 165 days from 06.09.2025 to 17.02.2026, after the period specified in the notice dated 03.07.2025 expired on 05.09.2025;

(ii) a penalty of Rs.5,000/- (Rupees Five Thousand only) under the CGST Act, 2017 and Rs.5,000/- (Rupees Five Thousand only) under the KGST Act, 2017, total Rs.10,000/-, being penalty at Rs.100 for each day of the period of default subject to the limit of Rs.5,000/- under the proviso to Section 123, should not be directed to be paid under Section 123 of the CGST Act, 2017 and the corresponding provision of the KGST Act, 2017;

(iii) no other penalty (under Section 122(1)(xvii), Section 124 or Section 125) is proposed in this notice, which is issued with due regard to Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-BLR-W

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Bengaluru West CGST Commissionerate, Karnataka

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 123 read with Section 150 of the Central Goods and Services Tax Act, 2017 read with Section 123 read with Section 150 of the Karnataka Goods and Services Tax Act, 2017, and with due regard to Section 126; penalty only - no demand of tax)

To,
The Sub-Registrar,
Sub-Registrar's Office, [locality],
Bengaluru, Karnataka (presently held by Mr. Z),

being the person specified in Section 150(1)(g) of the CGST Act, 2017, addressed in his official capacity only

Copy to (for information and for an opportunity to explain the circumstances of the default): Mr. P, the Sub-Registrar during the period of the default (01.04.2024 to 30.06.2026)

(hereinafter referred to as 'the Noticee')

WHEREAS Section 150(1)(g) of the Central Goods and Services Tax Act, 2017 [the Act] requires the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 to furnish an information return, for the prescribed period, within the prescribed time and in the prescribed form and manner. The Noticee is the Sub-Registrar of the Sub-Registrar's Office, [locality], Bengaluru, and Mr. P held charge of the office from 01.04.2024 to 30.06.2026. The information return for FY 2024-25 of the particulars of the registered transfers of immovable property with consideration of Rs.30 lakh or more was due on 30.06.2025 [form/manner/time as prescribed: Rule/Notification No. [●] dated [●]] and was not furnished by that date (RUD-1);

2. AND WHEREAS a notice dated 03.07.2025 bearing F. No. GEXCOM/INV/INFO/12/2025-BLR-W (RUD-2) was issued by the Joint Commissioner (Anti-Evasion), Bengaluru West CGST Commissionerate, as the authority empowered by the Commissioner, under Section 150(3) of the Act read with the corresponding provision of the Karnataka Goods and Services Tax Act, 2017 [KGST Act], requiring the Sub-Registrar to furnish the said information return 'within sixty (60) days from the date of service of this notice' and informing him that a penalty of Rs.100 for each day of continuing failure would be liable to be imposed under Section 123 of the Act;

3. AND WHEREAS the said notice was served on the Sub-Registrar's Office by speed post and e-mail and the acknowledgement of the Office bears the date 07.07.2025 (RUD-3). The period of sixty days, which is within the limit of ninety days laid down in Section 150(3), therefore expired on 05.09.2025;

4. AND WHEREAS the then Sub-Registrar, Mr. P, replied on 01.09.2025 that the data lie on the central server of the State Registration Department, that their release needs the approval of the Inspector General of Registration and Commissioner of Stamps, and that three more months be allowed (RUD-4). The Department replied on 04.09.2025 that the time was not being extended (RUD-5). The reminders dated 15.10.2025 and 10.12.2025 (RUD-6) were not answered;

5. AND WHEREAS the information return was furnished only on 18.02.2026 (RUD-7), without any defect being pointed out under Section 150(2). The failure to furnish the return therefore continued for 165 days, from 06.09.2025 (the day after the expiry of the period specified in the notice) to 17.02.2026 (the day before the return was furnished), as detailed in Annexure-A;

6. AND WHEREAS in his statement recorded on 12.03.2026 under Section 70 of the Act (RUD-8), Mr. P, inter alia, admitted receipt of the notice on 07.07.2025, stated that he had forwarded it to the Inspector General on 10.07.2025 and 12.08.2025, that he had no authority to release the data on his own, and

that no partial return had been furnished before 18.02.2026;

7. AND WHEREAS Section 123 of the Act provides that if a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues, subject to a limit of five thousand rupees under the proviso. At Rs.100 per day, the penalty for 165 days works out to Rs.16,500/-, which exceeds the limit; the limit of Rs.5,000/- was reached on 25.10.2025 (the fiftieth day of default) and the penalty proposed is therefore Rs.5,000/- under the Act and the corresponding Rs.5,000/- under the KGST Act, total Rs.10,000/- (Annexure-A);

8. AND WHEREAS no tax, interest or refund is involved in this matter and no demand under Section 74A of the Act is made. The notice is issued only for the penalty under Section 123. The Noticee is the person specified in Section 150(1)(g) and is addressed in his official capacity as the Sub-Registrar for the time being; no penalty is proposed against Mr. P or Mr. Z in their personal capacity;

9. AND WHEREAS it thus appears that the Noticee has contravened Section 150(1)(g) and Section 150(3) of the Act (and the corresponding provisions of the KGST Act) by failing to furnish the information return within the period specified in the notice dated 03.07.2025, and has thereby rendered himself liable to a penalty under Section 123 of the Act and the corresponding provision of the KGST Act;

NOW, THEREFORE

the Sub-Registrar, Sub-Registrar's Office, [locality], Bengaluru, Karnataka, being the person specified in Section 150(1)(g) of the Act, represented by Mr. Z, the Sub-Registrar for the time being, in his official capacity only, is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Bengaluru West CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the information return for FY 2024-25 should not be held to have been furnished late, in contravention of Section 150(1)(g) and Section 150(3) of the CGST Act, 2017/KGST Act, 2017, the failure having continued for 165 days from 06.09.2025 to 17.02.2026, after the period specified in the notice dated 03.07.2025 expired on 05.09.2025;

(ii) a penalty of Rs.5,000/- (Rupees Five Thousand only) under the CGST Act, 2017 and Rs.5,000/- (Rupees Five Thousand only) under the KGST Act, 2017, total Rs.10,000/-, being penalty at Rs.100 for each day of the period of default subject to the limit of Rs.5,000/- under the proviso to Section 123, should not be directed to be paid under Section 123 of the CGST Act, 2017 and the corresponding provision of the KGST Act, 2017.

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon (including any approval or communication of the Inspector General of Registration and Commissioner of Stamps and the circumstances which, in his view, explain or excuse the delay), must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of the available records, on merits;
- an opportunity of personal hearing will be granted before any order is passed, on a date to be separately intimated, in keeping with Section 126(3) of the Act and the principles of natural justice, and the Noticee (or an officer authorised by him) may appear and be heard; Mr. P is also invited to appear and explain the circumstances of the default;
- there is no tax or interest in this notice, and the benefit of Section 74A(8) or 74A(9) does not arise; the penalty, if directed, is payable by the Noticee in the manner to be specified in the order;
- this notice is issued without prejudice to any other action that may be taken under the Act, the KGST Act, or any other law for the time being in force, and subject to Section 126 of the Act.

List of Relied Upon Documents (RUDs):

RUD-1: Particulars of the information return (format and time prescribed) for FY 2024-25 and the e-mail reminder dated 02.07.2025;

RUD-2: Notice dated 03.07.2025 under Section 150(3) of the Act (F. No. GEXCOM/INV/INFO/12/2025-BLR-W);

RUD-3: Proof of service and acknowledgement dated 07.07.2025 of the Sub-Registrar's Office;

RUD-4: Letter dated 01.09.2025 of the Sub-Registrar, Bengaluru requesting further time;

RUD-5: Reply of the Department dated 04.09.2025;

RUD-6: Reminders dated 15.10.2025 and 10.12.2025;

RUD-7: Acknowledgement and covering letter of the information return furnished on 18.02.2026;

RUD-8: Statement of Mr. P recorded on 12.03.2026 under Section 70 of the Act;

Annexure-A: Statement of the days of default and the computation of the penalty [as per the table in the Situation and the working in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Bengaluru West CGST Commissionerate

Copy to: (1) The Inspector General of Registration and Commissioner of Stamps, Karnataka, Bengaluru, for information and necessary action; (2) The Joint Commissioner (Anti-Evasion), Bengaluru West CGST Commissionerate, for information; (3) Mr. P, former Sub-Registrar, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, locality, F. No./DIN, dates and the names of the officers shown in square brackets/blanks or as Mr. P and Mr. Z are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Teaching point - a penalty-only notice against a public office.*** *This is a no-tax notice (Exercise-50, non-display of certificate, is the nearest earlier no-tax notice, but it is against a taxable person and under Section 125/126). Here the penalty is a specific one under Section 123, with a built-in cap of Rs.5,000 in the proviso (which the Master Chart, Template II.A row 13, does not mention) and counted per day from the dates in the earlier Section 150(3) notice. The notice must therefore reproduce that earlier notice, its date of service and the period allowed, because the exact dates fix the days. Here the cap is reached on the 50th day of default, so that the long delay does not increase the penalty.*
- ***Who is the charged person?*** *Section 123 is addressed to 'a person who is required to furnish an information return under section 150'. For the persons listed in Section 150(1)(b) to (m) this is a statutory authority or office, not a taxpayer. The notice has been issued to the Sub-Registrar by designation, with the present incumbent answering in his official capacity, and the previous incumbent informed and invited to explain. No decided authority on penalty against an office-holder or the State Government under Section 123 was located, and this position is not settled; the safest practice is to address the head of the department (here the Inspector General of Registration) by copy so that the State Government is heard. Where the defaulter is a taxable person (150(1)(a)), a bank or a company, the notice is against the entity.*
- ***Section 123 and Section 124 are different.*** *Section 123 is a penalty which the proper officer may direct, for failure to comply with a Section 150(3) notice (information return). Section 124 is a fine of up to Rs.10,000 (and, for a continuing offence, a further fine of up to Rs.100 for each day after the first day, up to a maximum of Rs.25,000) for failure without reasonable cause to furnish information or return called for under Section 151 (statistics), or for wilfully furnishing false information; the wording ('punishable with a fine') is that of an offence, and the Act does not name the officer who imposes it, so it should not be proposed in an ordinary SCN until the procedure has been verified. The Master Chart (rows 13 and 14) correctly distinguishes the two, but gives no cap for Section 123.*
- ***Prescribed form/time - verify before issue.*** *Section 150(1) says the return is to be furnished for the prescribed period, within the prescribed time, in the prescribed form and manner and to the prescribed authority; Section 150(3) applies only if the return is not filed within the time specified in Section 150(1)*

or (2). The brief of this exercise refers to Rule 160 and a FORM GSTR; on verification, Rule 160 of the CGST Rules is a rule in the recovery chapter (recovery from a company in liquidation), and no rule or form prescribing the information return under Section 150 could be located. If none exists, the Noticee may argue that the time, form and authority were never prescribed and that the Section 150(3) notice and the penalty fail for that reason. The officer must therefore, before issuing the notice, find and cite the rule, notification or order prescribing the form, time and authority, and the authority empowered to issue the Section 150(3) notice (the sub-section says 'the said authority'). The placeholders in paragraph 1 of the notice are left for this purpose.

- ***Section 126.*** *Section 126(1) bars penalty for minor breaches (tax involved less than Rs.5,000), and Section 126(6) says Section 126 does not apply to a penalty that is a fixed sum or a fixed percentage. Whether Rs.100 per day is a 'fixed sum' is debatable (the amount depends on the number of days and is capped). The notice therefore does not depend on the answer and gives a hearing under Section 126(3)/Section 75(4) in any case. Contrast Exercise-02 and Exercise-52, where the penalty is a percentage of tax under Section 74A(5) and Section 126 was only cited to the extent applicable.*
- ***Authority and route.*** *The draft is settled by the jurisdictional Range/Division before issue, including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). No central tax is involved; the penalty is Rs.5,000 under each Act, and the proper officer for Section 123 is to be confirmed from the Commissioner's assignment order under Section 2(91). The summary of the notice is served electronically in FORM GST DRC-01 (Rule 142(1)(a) lists notices under Sections 122, 123, 124 and 125 - to be verified against the current Rule).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 63

Difference between the audited financial statements and the annual return (GSTR-9/9C) of a manufacturer - reconciliation of the difference, taxable and non-taxable heads, fraud and non-fraud, Section 74A

Exercise 63: Difference between the audited financial statements and the annual return (GSTR-9/9C) of a manufacturer - reconciliation of the difference, taxable and non-taxable heads, fraud and non-fraud, Section 74A

Situation in Brief:

1. M/s XXX Fasteners Pvt. Ltd. (GSTIN 06AAAAA0000A1Z5; 'the Company') manufactures high-tensile nuts, bolts and cold-forged fasteners (HSN 7318, taxable at 18%) at its plant at Ballabgarh, Faridabad, Haryana, and sells them to automobile vendors in Haryana and other States and to export customers. The Company is a regular taxpayer, a statutory audit and a tax audit under Section 44AB of the Income-tax Act, 1961 are applicable to it, and its aggregate turnover is above Rs.5 crore. Mr. Z is its Managing Director, Mr. P its Finance Head and Mr. Q its Head (Stores and Dispatch). The annual return for FY 2024-25 (FORM GSTR-9) and the reconciliation statement (FORM GSTR-9C, self-certified) were filed on 28.12.2025, within the due date of 31.12.2025.

2. The Anti-Evasion Section of the Faridabad CGST Commissionerate compared the audited financial statements for FY 2024-25 (signed on 12.08.2025) and the tax audit report with the GSTR-9 data, and noticed that the total of revenue from operations and other income in the audited statement of profit and loss is Rs.79,70,25,000/-, whereas the turnover declared in FORM GSTR-9 (taxable domestic supplies Rs.61,90,00,000/- and exports Rs.14,80,00,000/-) is Rs.76,70,00,000/-. The difference is **Rs.3,00,25,000/-**. In FORM GSTR-9C the Company showed this amount as 'un-reconciled difference - other income, non-taxable' without any break-up.

3. A summons dated 12.01.2026 under Section 70 of the CGST Act, 2017 called for the audited accounts with schedules and notes, the tax audit report (FORM 3CD), the ledger accounts of every revenue and income head with vouchers, the debit notes, and the reconciliation. The Company produced these on 29.01.2026 and 04.02.2026. The ledger extracts of the heads which make up the difference and the supporting vouchers (all taken from the Company's ERP and signed by Mr. P as true copies) show the following:

Head in the audited accounts	Amount (Rs.)	What the ledger/vouchers show
Sale of scrap (ferrous)	1,12,40,000	Cash/RTGS sale vouchers to four scrap dealers; weighbridge slips for about 405 MT; no tax invoice
Freight and packing recovered	41,50,000	Debit notes raised on customers (Haryana), booked as 'freight recovery'; not in GSTR-1
Interest on delayed payments	18,60,000	Debit notes on customers who paid late (Haryana Rs.12,50,000/-; M/s CCC Ltd., Chennai Rs.6,10,000/-)
Cancellation charges	3,60,000	Charges recovered under the cancellation clause from two customers who cancelled confirmed orders
Duty drawback and RoDTEP	38,70,000	Credits received from the Customs/DGFT through the bank for exports
Liquidated damages	7,20,000	Recovered from a machinery supplier for late delivery of a forging line, as per the purchase order
Forfeiture of security deposit	2,80,000	Deposit of a customer who failed to lift ordered goods, forfeited under the contract
Interest on bank deposits	22,30,000	TDS certificates of the banks (Form 16A)
Dividend	9,50,000	Dividend from listed companies, warrants and bank credits
Profit on sale of mutual fund units	14,25,000	Contract notes and statements of the mutual funds
Write-back of old provisions and balances	17,80,000	Journal vouchers writing back provisions for expenses and old creditors' balances
Gain on foreign exchange	11,60,000	Realised gain on settlement of export receivables, as per the treasury statement

Head in the audited accounts	Amount (Rs.)	What the ledger/vouchers show
TOTAL (difference)	3,00,25,000	

4. The statements of the following persons were recorded under Section 70:

(i) **Mr. P (Finance Head), on 18.02.2026**: he accepted that the scrap, freight and interest amounts were not included in FORM GSTR-1/3B; that the Company had billed scrap with GST in FY 2023-24 (tax invoices of Rs.96,50,000/- were shown to him) but from April 2024 scrap was sold without invoice; that the interest on delayed payments and freight recoveries had been treated as 'financial income' and 'recoveries' in accordance with an opinion of the Company's consultant dated 17.07.2023 (which he produced), under which interest on delayed payment of dues was not subject to GST; and that the other heads were shown as non-operating income.

(ii) **Mr. Q (Head - Stores and Dispatch), on 25.02.2026**: he produced the e-mail dated 03.04.2024, sent by him to the Accounts Department, stating 'From this month scrap to be sold on cash/RTGS without invoice and not to be shown in GST as per MD's verbal instruction; sell to Mr. R and others at Rs.1,500/MT lower'; he stated that dealers who asked for a bill were told that a bill would cost them the GST, and that the MD's instruction was given orally in a meeting held on 02.04.2024. He further stated that about 62% of the scrap was paid in cash.

(iii) **Mr. R, proprietor of M/s BBB Metals (a registered scrap dealer, Faridabad), on 06.03.2026**: he stated that his firm bought scrap from the Company at the lower rate, without invoice, throughout FY 2024-25, that he had asked for tax invoices and was told that the Company was not issuing them, and that he sold the scrap onward to rolling mills. A second dealer, Mr. S (unregistered), confirmed on 09.03.2026 that he purchased the scrap from the Company for cash and received no invoice.

(iv) **Mr. Z (Managing Director), on 20.03.2026**: he denied having given any oral instruction to stop billing the scrap, stated that scrap was handled by the Stores Head and that the Finance Head was responsible for GST, and accepted that he had signed the financial statements and the reconciliation statement. He did not dispute the figures.

5. The monthly details of the receipts of the four taxable heads, worked out from the ledgers, are in the Annexure to the notice; the aggregate for FY 2024-25 is: scrap Rs.1,12,40,000, freight Rs.41,50,000, interest on delayed payments Rs.18,60,000 and cancellation charges Rs.3,60,000. The Company's tax audit report and the audited statements agree with the ledger extracts, and no document produced by the Company shows that any of the amounts was reported in FORM GSTR-1 or GSTR-3B.

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Fasteners Pvt. Ltd. (under heading Contravention), after deciding which of the heads in the above table are taxable supplies and which are not.

(ii) Identify the provision(s) of GST law under which action is to be taken against the Company and others (under heading Consequences of Contravention of legal Provisions), indicating the penalty route for each head with reasons.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to the Company, listing the proposed action.

(iv) Also prepare the draft Show Cause Notice for issuance to the Company.

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SUGGESTED SOLUTION

(Inquiry on summons, reconciliation of audited accounts with the annual return, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Fasteners Pvt. Ltd., Faridabad CGST Commissionerate)

A. CONTRAVENTION

The first step is to reconcile the difference of Rs.3,00,25,000/- head by head. The difference between the audited accounts and the annual return is only a pointer: not every rupee of 'other income' is the value of a supply, and the Master Chart (Template IV, row 5) is invoked only to the extent that the amount is a taxable supply which has been suppressed. The classification is as follows:

Head	Amount (Rs.)	Treatment and reason	Tax @18% (Rs.)
Sale of scrap	1,12,40,000	Taxable - supply of goods (HSN 7204, 18%) by a registered person; invoice required	20,23,200
Freight and packing recovered	41,50,000	Taxable - incidental expenses charged by the supplier form part of the value of the supply, Section 15(2)(c)	7,47,000
Interest on delayed payments	18,60,000	Taxable - interest for delayed payment of consideration is part of the value, Section 15(2)(d); follows the principal supply at 18%	3,34,800
Cancellation charges	3,60,000	Taxable - consideration for allowing cancellation of a confirmed order (Circular No. 178/10/2022-GST distinguishes this from liquidated damages)	64,800
Duty drawback and RoDTEP	38,70,000	Not taxable - paid by the Government, not by the recipient, for any supply; the subsidy by the Central Government is excluded from 'consideration' under Section 2(31)	Nil
Liquidated damages (from supplier)	7,20,000	Not taxable - compensation for breach, not consideration for tolerating an act (Circular No. 178/10/2022-GST dated 03.08.2022; Schedule II, entry 5(e) not attracted)	Nil
Forfeited security deposit	2,80,000	Not taxable - forfeiture on breach (customer did not lift goods); same reasoning	Nil
Interest on bank deposits	22,30,000	Not taxable - exempt service (extending deposits, consideration by way of interest), Notification No. 12/2017-CT (Rate), entry 27 - not a demand head	Nil
Dividend	9,50,000	Not a supply - dividend is a return on shares; shares are 'securities', which are neither goods nor services (Sections 2(52), 2(102))	Nil
Profit on sale of mutual fund units	14,25,000	Not a supply - units are securities; only the gain is shown	Nil
Write-back of old provisions	17,80,000	Not a supply - accounting entry with no recipient and no consideration (but see Drafting Note on ITC reversal)	Nil
Gain on foreign exchange	11,60,000	Not a supply - exchange gain on realisation; the value of the export supply is fixed on the date of supply and the gain is not additional consideration	Nil
TOTAL	**3,00,25,000**	**Taxable Rs.1,76,10,000; not taxable Rs.1,24,15,000**	**31,69,800**

On the taxable heads (Rs.1,76,10,000) the following provisions of law stand contravened (in each case read with the corresponding provisions of the Haryana Goods and Services Tax Act, 2017 [HGST Act], the IGST Act, 2017 (for the inter-State interest recovered from the Chennai customer) and the Rules made thereunder):

1. **Section 9(1) of the CGST Act, 2017 read with Section 15(1), 15(2)(c) and 15(2)(d)** - non-payment of tax at 18% on the scrap, freight, interest and cancellation charges, which are supplies of goods or part of the value of supplies of goods.
2. **Section 31(1) read with Rule 46** - scrap was supplied without issue of tax invoices; and **Section 34** - debit notes issued to customers for freight, interest and cancellation charges were not declared in the return, as Section 37 requires.
3. **Sections 37(1) and 39(1)** - the outward supplies were not declared in FORM GSTR-1 and the tax was not paid in FORM GSTR-3B for the respective tax periods; and **Section 44(1) read with Rule 80** - the annual return and the reconciliation statement did not disclose the supplies (the reconciliation statement showed the difference as 'un-reconciled' with no break-up).

Note: *Section 35 (accounts) is not shown as contravened: the Company has maintained its books accurately and it is the books which furnish the evidence. The Chart cites Section 35 for the offence because the books are the benchmark against which the returns are tested; the contravention lies in the returns (Sections 37, 39 and 44) and in the non-payment of tax (Section 9). Section 76 is not attracted because no tax was collected from the customers or dealers. Sections 16/17 and ITC are not involved in this demand.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the Company to the following action under the CGST Act, 2017 (read with the corresponding provisions of the HGST Act, 2017 and the IGST Act, 2017):

1. No demand on the whole difference - tax is demanded only on the four taxable heads (Rs.1,76,10,000/-). The remaining Rs.1,24,15,000/- are not supplies (or are exempt supplies) and no tax is demanded on them. A demand on the entire difference of Rs.3,00,25,000/- would be contrary to Section 7 and Section 15 and would not survive adjudication; it would also dilute the evidence on the heads on which the case is strong.
2. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017** (and the HGST Act and, for the inter-State supply, the IGST Act). The supplies pertain to FY 2024-25, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2024-25 was due on 31.12.2025, so the notice may be issued up to 30.06.2029 [Section 74A(2)]; the order must be passed within twelve months of the notice, extendable by six months [Section 74A(7)]. Tax of Rs.31,69,800/- = CGST Rs.15,30,000 + HGST Rs.15,30,000 + IGST Rs.1,09,800.
3. Interest - under **Section 50(1)** at 18% per annum on the tax of each month from the day after the due date of FORM GSTR-3B for that month (the 20th of the following month) till payment. Illustratively, to 30.11.2026, interest is Rs.11,81,063/- (month-wise workings in the table below).
4. Penalty - fraud and non-fraud on the evidence, head by head - Section 74A(5) fixes the penalty by the reason for the non-payment, and this can differ from head to head within one notice.
   (a) **Scrap (tax Rs.20,23,200/-): Section 74A(5)(ii) - penalty equal to the tax, Rs.20,23,200/-.** The evidence of deliberate suppression is specific: the Company issued tax invoices for scrap in FY 2023-24 (so knew the supply was taxable); the e-mail of 03.04.2024 directs that scrap be sold without invoice and 'not shown in GST'; the dealers were quoted a lower rate for no invoice; 62% of the receipts were in cash; Mr. R and Mr. S confirm the practice; yet the receipts were recorded in the audited books under 'sale of scrap' - which shows how the sales were concealed from the GST returns and not from the accounts. The concessions of **Section 74A(9)** (15% of the tax before the notice, 25% within 60 days of the notice, 50% within 60 days of the order, with tax and interest) are available.
   (b) **Freight, interest on delayed payments and cancellation charges (tax Rs.11,46,600/-): Section 74A(5)(i) - ten per cent of the tax or Rs.10,000 under each Act, whichever is higher, Rs.1,14,660/- in all (CGST Rs.51,840, HGST Rs.51,840, IGST Rs.10,980).** The default here appears to be non-fraud: the items were raised by debit notes to named customers, booked under their own narration, disclosed in the audited accounts and the notes, and the Company acted on a written consultant's opinion dated 17.07.2023 that interest on delayed payment was not taxable; there is no instruction, no concealment from the books and no evidence of any intention to

evade; the point on Section 15(2)(d) and (c) is a point of interpretation which the Company misapplied. The concession of **Section 74A(8)** (no penalty if tax and interest are paid before the notice, or within 60 days of it) is available.

5. Specific offence penalties - **Section 122(1)(i)** (supply of goods without issue of invoice) and **Section 122(1)(xv)** (suppression of turnover leading to evasion of tax) are attracted to the scrap supplies. As a penalty is proposed under Section 74A(5)(ii), they are proposed in the alternative and without prejudice, subject to Section 75(13) (no double penalty for the same act) and Section 126. They are not proposed for the non-fraud heads. A mere difference between the audited accounts and the returns does not prove 'suppression' in the sense of Section 122(1)(xv): the suppression has to be shown from the evidence, as has been done for the scrap and not done for the other heads.

6. Persons concerned - the Company (through Mr. Z, the Managing Director) is the person liable to tax and penalty. A penalty on Mr. Z under **Section 122(1A)** (the person at whose instance the transaction is conducted and who retains the benefit) is considered but not proposed on the present evidence: the only evidence that the instruction was his is the statement of Mr. Q and the e-mail referring to the 'MD's verbal instruction', which Mr. Z denies; it has not been corroborated by any independent evidence. A penalty on Mr. Q under **Section 122(3)(a)** (aiding or abetting) is also considered and not proposed since he acted as a senior employee in the course of his duties; both are left open if further evidence emerges (the notice reserves the right under Sections 74A(3)/(4) and 122 to issue a further notice).

7. Recovery - Sections 78 and 79, and, if required to protect the revenue, provisional attachment under Section 83, which is not proposed because the Company is a going concern with substantial assets.

8. Alternative routes (not adopted) - (a) Section 74A on the whole difference (rejected - see 1 above); (b) separate proceedings for ITC reversal under Section 17/Rule 37 if any of the written-back creditors' balances relate to invoices on which ITC was claimed and not paid within 180 days (a different issue - see Exercise-11; not covered by this notice); (c) Section 65 audit - not adopted, since the information needed was available on summons.

9. Prosecution - Section 132(1)(a) (supply without invoice with intent to evade tax) has been considered: the tax involved on the scrap (Rs.20,23,200/-, including State tax) and on the whole demand (Rs.31,69,800/-) is far below the lowest monetary limit at which clauses (a) and (e) are punishable (tax exceeding Rs.2 crore under Section 132(1)(ii); the Rs.1 crore tier applies to clause (b) only). Prosecution is not proposed.

Illustrative working of tax and interest (month-wise, taxable heads only; tax periods April 2024 to March 2025):

Tax period	Taxable value (Rs.)	Tax @18% (Rs.)	Due date GSTR-3B	Days to 30.11.2026	Interest @18% (Rs.)
April 2024	14,09,000	2,53,620	20.05.2024	924	1,15,567
May 2024	15,85,000	2,85,300	20.06.2024	893	1,25,641
June 2024	14,09,000	2,53,620	20.07.2024	863	1,07,938
July 2024	15,85,000	2,85,300	20.08.2024	832	1,17,059
August 2024	12,32,000	2,21,760	20.09.2024	801	87,598
September 2024	15,85,000	2,85,300	20.10.2024	771	1,08,477
October 2024	14,09,000	2,53,620	20.11.2024	740	92,554
November 2024	14,09,000	2,53,620	20.12.2024	710	88,802
December 2024	15,85,000	2,85,300	20.01.2025	679	95,533
January 2025	14,09,000	2,53,620	20.02.2025	648	81,047
February 2025	15,85,000	2,85,300	20.03.2025	620	87,231
March 2025	14,08,000	2,53,440	20.04.2025	589	73,616

Tax period	Taxable value (Rs.)	Tax @18% (Rs.)	Due date GSTR-3B	Days to 30.11.2026	Interest @18% (Rs.)
TOTAL	**1,76,10,000**	**31,69,800**			**11,81,063**

Summary of the demand proposed:

Particulars	CGST (Rs.)	HGST (Rs.)	IGST (Rs.)	Total (Rs.)
Tax on scrap (fraud)	10,11,600	10,11,600	-	20,23,200
Tax on freight, interest, cancellation (non-fraud)	5,18,400	5,18,400	1,09,800	11,46,600
Total tax	15,30,000	15,30,000	1,09,800	31,69,800
Penalty 74A(5)(ii) on scrap	10,11,600	10,11,600	-	20,23,200
Penalty 74A(5)(i) on the rest	51,840	51,840	10,980	1,14,660
Total tax and penalty (interest extra)	**25,93,440**	**25,93,440**	**1,20,780**	**53,07,660**

Basis: *Taxable value is taken as the value actually received/recorded (no tax was charged separately); if the Company shows that any recovery was tax-inclusive, cum-tax valuation can be considered at adjudication. The interest working treats the whole month's tax together for each Act; the split of interest between the Acts follows the split of tax. The central tax (CGST plus IGST) is Rs.16,39,800/-, which falls in the range of the Deputy/Assistant Commissioner.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Fasteners Pvt. Ltd., Ballabgarh, Faridabad, Haryana (GSTIN 06AAAAA0000A1Z5), through Mr. Z, its Managing Director, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Faridabad CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the receipts of Rs.1,12,40,000/- from sale of scrap, Rs.41,50,000/- from freight and packing recovered, Rs.18,60,000/- from interest on delayed payments and Rs.3,60,000/- from cancellation charges, total Rs.1,76,10,000/-, during FY 2024-25, should not be held to be the value of taxable supplies of goods, on which tax at 18% was payable, and not declared or paid, in contravention of Sections 9(1), 15, 31(1), 34, 37(1), 39(1) and 44(1) of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017;

(ii) an amount of Rs.15,30,000/- (Central tax), Rs.15,30,000/- (Haryana State tax) and Rs.1,09,800/- (Integrated tax), total Rs.31,69,800/-, being the tax not paid, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the HGST Act, 2017 and the IGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the day after the due date of FORM GSTR-3B of the respective tax period till the date of payment;

(iv) a penalty of Rs.20,23,200/- (Central tax Rs.10,11,600 and Haryana State tax Rs.10,11,600), being equal to the tax of Rs.20,23,200/- on the scrap, should not be imposed on it under Section 74A(5)(ii) of the CGST Act, 2017/HGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) a penalty of Rs.1,14,660/- (Central tax Rs.51,840, Haryana State tax Rs.51,840 and Integrated tax Rs.10,980), being ten per cent of the tax or Rs.10,000 under each Act, whichever is higher, on the tax of Rs.11,46,600/- on freight, interest and cancellation charges, should not be imposed on it

under Section 74A(5)(i) of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017 (without prejudice to the benefit of Section 74A(8));

(vi) penalty should not separately be imposed on it under Section 122(1)(i) and Section 122(1)(xv) of the CGST Act, 2017/HGST Act, 2017 in relation to the scrap, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-FBD

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Faridabad CGST Commissionerate, Haryana

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Haryana Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Services Tax Act, 2017)

To,
M/s XXX Fasteners Pvt. Ltd. (GSTIN 06AAAAA0000A1Z5),
through Mr. Z, Managing Director,
YYYY, Ballabgarh, Faridabad, Haryana.

(hereinafter referred to as 'the Noticee')

WHEREAS the Noticee is a registered person engaged in the manufacture of nuts, bolts and fasteners (HSN 7318) at Ballabgarh, Faridabad, and filed its annual return in FORM GSTR-9 and the reconciliation statement in FORM GSTR-9C for FY 2024-25 on 28.12.2025, declaring a turnover of Rs.76,70,00,000/- (RUD-1);

2. AND WHEREAS the audited financial statements for FY 2024-25, signed on 12.08.2025, and the tax audit report show revenue from operations and other income totalling Rs.79,70,25,000/- (RUD-2), which exceeds the turnover in FORM GSTR-9 by Rs.3,00,25,000/-. The Noticee showed the difference in FORM GSTR-9C as 'un-reconciled difference - other income, non-taxable' without any break-up;

3. AND WHEREAS a summons dated 12.01.2026 under Section 70 of the Act was issued (RUD-3) and in response the Noticee produced the audited accounts, the ledger extracts with vouchers and the debit notes on 29.01.2026 and 04.02.2026 (RUD-4 to RUD-6). The break-up of the difference, taken from the ledgers, is given in Annexure-A. It consists of twelve heads, of which four are taxable supplies and the remaining eight are not supplies of goods or services or are exempt, and are not made the subject of this notice;

4. AND WHEREAS the four heads which are taxable supplies are (a) sale of ferrous scrap Rs.1,12,40,000/- (HSN 7204, taxable at 18%); (b) freight and packing recovered from customers by debit notes Rs.41,50,000/-, which, being incidental expenses charged by the supplier, form part of the value of the supply under Section 15(2)(c); (c) interest on delayed payment by customers Rs.18,60,000/-, which forms part of the value under Section 15(2)(d), of which Rs.6,10,000/- was recovered from a customer at Chennai in Tamil Nadu (inter-State supply); and (d) cancellation charges Rs.3,60,000/- recovered for allowing the cancellation of confirmed orders; total Rs.1,76,10,000/-. None of these was included in FORM GSTR-1 or FORM GSTR-3B, and no tax was paid thereon (RUD-4, RUD-6, RUD-10);

5. AND WHEREAS the remaining Rs.1,24,15,000/- consists of duty drawback and RoDTEP credits (Rs.38,70,000/-), liquidated damages recovered from a supplier (Rs.7,20,000/-), forfeited security deposit (Rs.2,80,000/-), interest on bank deposits (Rs.22,30,000/-), dividend (Rs.9,50,000/-), profit on sale of mutual fund units (Rs.14,25,000/-), write-back of old provisions and balances (Rs.17,80,000/-) and gain on foreign exchange (Rs.11,60,000/-). These amounts have been examined and no tax is proposed to be demanded on them (Annexure-A);

6. AND WHEREAS the statement of Mr. P, Finance Head, recorded on 18.02.2026 under Section 70 (RUD-7), shows that he accepted that the scrap, freight and interest amounts were not reported in the GST returns; that the Company had issued tax invoices with GST for scrap in FY 2023-24 (RUD-9) but from April 2024 sold scrap without invoice; and that the interest and freight recoveries were treated as non-taxable on the basis of a consultant's opinion dated 17.07.2023;

7. AND WHEREAS Mr. Q, Head (Stores and Dispatch), in his statement recorded on 25.02.2026 (RUD-8)

produced his e-mail dated 03.04.2024 to the Accounts Department stating 'From this month scrap to be sold on cash/RTGS without invoice and not to be shown in GST as per MD's verbal instruction; sell to Mr. R and others at Rs.1,500/MT lower', and stated that dealers who asked for a bill were told that a bill would cost them the GST and that about 62% of the scrap was paid in cash; Mr. R of M/s BBB Metals and Mr. S, scrap dealers, confirmed in their statements dated 06.03.2026 and 09.03.2026 (RUD-11) that they purchased scrap from the Noticee without invoice, at a lower rate, throughout FY 2024-25; and the weighbridge slips and the cash/RTGS sale vouchers (RUD-10) show the despatch of about 405 MT of scrap and the receipt of Rs.1,12,40,000/-;

8. AND WHEREAS the Noticee billed its scrap with GST in FY 2023-24, stopped billing it from April 2024 under the instruction in the said e-mail, sold it at a lower rate to those who did not ask for invoices, took 62% of the sale price in cash, and yet recorded the receipts in its books as 'sale of scrap' and reported them in neither FORM GSTR-1 nor FORM GSTR-3B nor FORM GSTR-9. These acts and omissions, and the silence of FORM GSTR-9C as to the break-up, appear to be a deliberate suppression of facts to evade tax on the scrap, attracting penalty under Section 74A(5)(ii) of the Act;

9. AND WHEREAS in respect of the freight, interest on delayed payments and cancellation charges, the Noticee raised debit notes on named customers, booked the receipts under their own narration in its audited accounts, and acted on a written consultant's opinion; it does not appear that the non-payment of tax on these items was by reason of fraud, wilful misstatement or suppression of facts to evade tax, and penalty under Section 74A(5)(i) of the Act is accordingly proposed on this tax;

10. AND WHEREAS the tax payable at 18% on the taxable value of Rs.1,76,10,000/- is Rs.15,30,000/- (Central tax), Rs.15,30,000/- (Haryana State tax) and Rs.1,09,800/- (Integrated tax), total Rs.31,69,800/-, of which Rs.20,23,200/- is on the scrap and Rs.11,46,600/- on the other three heads (Annexure-B, month-wise);

11. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the HGST Act, 2017 and the IGST Act, 2017):

- Section 9(1) read with Section 15(1), 15(2)(c) and 15(2)(d) - non-payment of tax on the taxable supplies;
- Section 31(1) read with Rule 46 - failure to issue tax invoices for the scrap;
- Section 34 and Sections 37(1) and 39(1) - failure to declare the debit notes and outward supplies and to pay the tax in the returns;
- Section 44(1) read with Rule 80 - furnishing an annual return and a reconciliation statement which did not disclose the supplies;

12. AND WHEREAS the aforesaid acts and omissions of the Noticee render it liable to: (a) demand and recovery of tax under Section 74A of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017; (b) interest under Section 50(1); (c) penalty under Section 74A(5)(ii) on the tax on the scrap and under Section 74A(5)(i) on the remaining tax; and (d) penalty under Sections 122(1)(i) and 122(1)(xv) in relation to the scrap (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c) above);

NOW, THEREFORE

M/s XXX Fasteners Pvt. Ltd., through Mr. Z, its Managing Director, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Faridabad CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the receipts of Rs.1,12,40,000/- from sale of scrap, Rs.41,50,000/- from freight and packing recovered, Rs.18,60,000/- from interest on delayed payments and Rs.3,60,000/- from cancellation charges, total Rs.1,76,10,000/-, during FY 2024-25, should not be held to be the value of taxable supplies of goods, on which tax at 18% was payable, and not declared or paid, in contravention of Sections 9(1), 15, 31(1), 34, 37(1), 39(1) and 44(1) of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017;

(ii) an amount of Rs.15,30,000/- (Central tax), Rs.15,30,000/- (Haryana State tax) and Rs.1,09,800/- (Integrated tax), total Rs.31,69,800/- (Rupees Thirty-One Lakh Sixty-Nine Thousand Eight

Hundred only), being the tax not paid, as detailed in Annexure-B, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the HGST Act, 2017 and the IGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the day after the due date of FORM GSTR-3B of the respective tax period till the date of payment;

(iv) a penalty of Rs.20,23,200/- (Central tax Rs.10,11,600 and Haryana State tax Rs.10,11,600), being equal to the tax of Rs.20,23,200/- on the scrap, should not be imposed on it under Section 74A(5)(ii) of the CGST Act, 2017/HGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) a penalty of Rs.1,14,660/- (Central tax Rs.51,840, Haryana State tax Rs.51,840 and Integrated tax Rs.10,980), being ten per cent of the tax or Rs.10,000 under each Act, whichever is higher, on the tax of Rs.11,46,600/- on freight, interest and cancellation charges, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017 (without prejudice to the benefit of Section 74A(8));

(vi) penalty should not separately be imposed on it under Section 122(1)(i) and Section 122(1)(xv) of the CGST Act, 2017/HGST Act, 2017 in relation to the scrap, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

13. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits; the Noticee may in the reply dispute the classification of any head in Annexure-A and show any further reconciling item with documents;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017/HGST Act, 2017 on the tax at paragraph 10 relating to freight, interest and cancellation charges (no penalty if the tax and interest are paid within 60 days of this notice, or before it), and to Section 74A(9) on the tax relating to the scrap (penalty at 25% of the tax if paid, with tax and interest, within 60 days of this notice, and at 50% within 60 days of the order), whereby the proceedings in respect of the said notice are deemed to be concluded (prosecution under Section 132 is not covered);
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/HGST Act, 2017/IGST Act, 2017, or any other law for the time being in force; the right to issue a further notice or a statement under Section 74A(3) in respect of other persons or other periods is reserved.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GSTR-9 and FORM GSTR-9C for FY 2024-25 filed on 28.12.2025;

RUD-2: Audited financial statements (with schedules and notes) and tax audit report (FORM 3CD) for FY 2024-25;

RUD-3: Summons dated 12.01.2026 under Section 70, with proof of service;

RUD-4: Ledger extracts of sale of scrap, freight recovery, interest on delayed payments and cancellation charges, with vouchers, signed by Mr. P as true copies;

RUD-5: Ledger extracts of the non-taxable heads (drawback, damages, deposit forfeiture, bank interest, dividend, mutual fund, write-back, exchange gain) with supporting documents;

RUD-6: Debit notes issued to customers for freight, interest and cancellation charges, and the consultant's opinion dated 17.07.2023;

RUD-7: Statement of Mr. P, Finance Head, recorded on 18.02.2026;

RUD-8: Statement of Mr. Q, Head (Stores and Dispatch), recorded on 25.02.2026, with his e-mail dated 03.04.2024;

RUD-9: Tax invoices of scrap sales for FY 2023-24 (Rs.96,50,000/-) from the Noticee's GST returns;

RUD-10: Weighbridge slips (about 405 MT) and cash/RTGS scrap sale vouchers for FY 2024-25;

RUD-11: Statements of Mr. R (M/s BBB Metals) dated 06.03.2026 and Mr. S dated 09.03.2026;

RUD-12: Statement of Mr. Z, Managing Director, recorded on 20.03.2026;

Annexure-A: Reconciliation of the difference between the audited accounts and FORM GSTR-9, head by head, with the treatment of each head [as per Part A and the table in the Situation];

Annexure-B: Month-wise statement of taxable value, tax and interest [as per the working in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Faridabad CGST Commissionerate

Copy to: The Additional/Joint Commissioner, CGST, Faridabad Commissionerate, for information.

Drafting note (not part of the notice):

- *The addressee, GSTIN, jurisdictional division/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The Company, its officers and the dealers (Mr. P, Mr. Q, Mr. R, Mr. S, Mr. Z, M/s BBB Metals, M/s CCC Ltd.) are fictional.*
- ***Teaching point - reconciliation, not an automatic demand on the difference.** A mismatch between the audited accounts (or the tax audit report) and FORM GSTR-9/9C is only a signal. The officer must (1) break the difference into heads with the help of the ledgers and vouchers, (2) decide on the law which heads are supplies and taxable (and at what value), (3) demand tax on those heads only, and (4) argue fraud from specific evidence on each head and not from the mere fact of the difference. Here only Rs.1,76,10,000 of the difference of Rs.3,00,25,000 is taxed; the scrap is a case of suppression (written instruction, price concession, cash, earlier billing), while freight, interest and cancellation charges are a case of non-fraud. Contrast Exercise-14 (suppression proved from parallel books, the whole of the turnover in them taxed) and Exercise-17 (GSTR-9 against GSTR-3B, a return-to-return mismatch in which no audited accounts are involved).*
- ***One notice, two penalty heads.** Under Section 74A the notice period (42 months) is the same for fraud and non-fraud, but the penalty differs [Section 74A(5)(i) and (ii)] and so do the concessions [Section 74A(8) and (9)]. The notice therefore splits the tax into the fraud part (scrap) and the non-fraud part, and each concession is set out against its own part. If the evidence on the scrap fails, the whole tax falls under 74A(5)(i) without any need to withdraw the notice.*
- ***Chart versus Act.** Template IV, row 5 of the Master Chart cites Section 35 (accounts) as the provision contravened. Where the accounts are correct and only the returns are wrong, the contravention is of Sections 9, 15, 31, 34, 37, 39 and 44, and Section 35 is the source of the evidence. The Chart's reference to a CA audit through Section 35(5) and the reconciliation statement under Section 44(2) is obsolete: these were omitted with effect from 01.08.2021 and FORM GSTR-9C is now self-certified (Rule 80(3)), so the 'audit' referred to in the case is the statutory audit and the income-tax audit, and not a GST audit.*
- ***Liquidated damages and cancellation charges.** Circular No. 178/10/2022-GST dated 03.08.2022 (as reported; the text of the circular should be read before relying on it) treats liquidated damages and forfeiture of earnest money on breach of contract as compensation and not as consideration for tolerating an act under Schedule II, entry 5(e), but treats cancellation charges recovered under an agreed facility of cancellation as consideration for a supply. The two are therefore opposite in the table. If the contract describes a cancellation charge but in substance it is compensation for loss, the characterisation should be looked at again.*

- ***Related issues kept out of this notice.*** *(a) If the written-back creditors' balances relate to invoices on which ITC was claimed and which were not paid within 180 days, ITC must be reversed (Section 16(2) second proviso, Rule 37) - see Exercise-11; (b) interest on bank deposits is an exempt supply which, on the reading of Section 17(3) as amended, does not enter the exempt-supply ratio of Rule 42, but this should be verified; (c) the rate of 18% for HSN 7318 and for scrap (HSN 7204) should be checked against the rate notification for FY 2024-25 (the rates were changed on 22.09.2025, which does not affect FY 2024-25).*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand (CGST plus IGST) is Rs.16,94,700/-, within the Deputy/Assistant Commissioner's limit. The pre-notice intimation under Rule 142(1A) (FORM GST DRC-01A) should be considered, to the extent applicable to Section 74A.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 64

Retail supplies without invoice through a hidden 'estimate' mode of the billing software - Sections 31, 33, 74A, 122 and 132 - forensic and electronic evidence

Exercise 64: Retail supplies without invoice through a hidden 'estimate' mode of the billing software - Sections 31, 33, 74A, 122 and 132 - forensic and electronic evidence

Situation in Brief:

1. M/s XXX Mobile Hub Pvt. Ltd. (GSTIN 32AAAAA0000A1Z5; 'the Company') runs three retail showrooms selling mobile phones and accessories (mobile phones, chargers, power banks, earphones and covers; taxable at 18%) at Kozhikode, Malappuram and Kannur in Kerala, and has its registered office at Kozhikode. It files FORM GSTR-1 and FORM GSTR-3B monthly. Mr. Z is its Managing Director and promoter; Mr. Q is the Manager of the Kozhikode showroom, which is the largest of the three. The billing software ('AAA-POS') was supplied and is supported by M/s AAA Software Solutions, Kozhikode, a proprietary concern of Mr. P, under a licence and annual maintenance contract.

2. Intelligence indicated that the Company's showrooms issued 'estimate' slips, instead of GST invoices, to many walk-in customers. Two officers of the Kozhikode CGST Commissionerate made test purchases on 12.02.2026 at each of the three showrooms as ordinary customers, in the presence of two independent witnesses (officers of another Government department), paying the price displayed and without asking for any concession or for a bill. At Kozhikode (a power bank, Rs.1,499/-, paid in cash) and at Malappuram (earphones, Rs.1,299/-, paid by UPI) only a computer-printed 'ESTIMATE' slip (no GSTIN, no tax, no invoice number) was given; at Kannur a GST invoice was issued for the cash purchase of a cover. A mahazar was drawn on the spot on each occasion.

3. On the authorisation of the Joint Commissioner (FORM GST INS-01) dated 23.02.2026, a search under Section 67 of the CGST Act, 2017 was conducted on 24.02.2026 at the three showrooms and at the registered office, in the presence of independent panch witnesses. The officers found that every billing counter ran AAA-POS with two modes: 'Tax Invoice' mode, and a second 'Estimate/Quick Sale' mode, which could be enabled only by a code known to the Manager and cashier. In the Estimate mode the sale reduced the stock and was added to a separate table (EST_BILL) in the same database, no tax was calculated, the slip carried a series 'E' number, and the amounts did not flow to the GST sales register; the daily closing (Z) report generated at 11 p.m. gave two totals, 'Total Sale' and 'GST Sale', and the difference was cash to be handed to the Managing Director's office (the closing reports were e-mailed to Mr. Z's personal address).

4. The POS servers at all four locations were imaged by the cyber forensic team on 24.02.2026 in the presence of the panch witnesses, using write-blockers, the hash values of the source and the image being recorded in the panchnama. The audit log of the Kozhikode server showed that on 21.02.2026 (after the test purchases at the showrooms) Mr. Q had run the utility 'Purge estimate data older than 90 days', and the log also records the deletion of the estimate data of the period April 2025 to November 2025 from that server. The data of these months were recovered from the nightly backup disk kept at the registered office, which was imaged (hash verified), and from the vendor's remote-support server, which was imaged on 25.02.2026 when a summons was served on Mr. P; the three sources were found identical for the common period.

5. The EST_BILL tables and the UPI settlement data (the QR code displayed at the 'Counter 2' of each showroom was linked to a current account of the Company with a bank, which was different from the account of the 'Tax Invoice' QR; the bank and the payment aggregator furnished settlement statements on summons under Section 70) reconcile. Month-wise, the invoiced sales (declared taxable value in FORM GSTR-1/GSTR-3B), the estimate-mode receipts, and the UPI receipts as per the aggregator are given below; the estimate-mode receipts were in rupees (inclusive of any tax, since no tax was charged) and aggregate Rs.10,92,50,000/-, of which UPI Rs.5,98,76,800/- and cash Rs.4,93,73,200/-. The estimate-mode receipts are about 20.0% of the total sale value of the period.

Month	Invoiced - declared taxable value (Rs.)	Estimate-mode receipts (Rs.)	of which UPI per aggregator (Rs.)	of which cash (Rs.)
April 2025	3,12,40,000	88,40,000	46,85,200	41,54,800
May 2025	3,28,70,000	94,10,000	50,81,400	43,28,600
June 2025	3,09,60,000	91,60,000	47,63,200	43,96,800

Month	Invoiced - declared taxable value (Rs.)	Estimate-mode receipts (Rs.)	of which UPI per aggregator (Rs.)	of which cash (Rs.)
July 2025	3,31,50,000	97,30,000	53,51,500	43,78,500
August 2025	3,47,20,000	1,02,70,000	57,51,200	45,18,800
September 2025	3,64,80,000	1,08,20,000	62,75,600	45,44,400
October 2025	4,18,90,000	1,36,50,000	77,80,500	58,69,500
November 2025	3,53,10,000	1,04,80,000	57,64,000	47,16,000
December 2025	3,69,20,000	1,01,90,000	55,02,600	46,87,400
January 2026	3,40,50,000	96,40,000	51,09,200	45,30,800
February 2026 (1st to 23rd)	2,26,40,000	70,60,000	38,12,400	32,47,600
TOTAL	**37,02,30,000**	**10,92,50,000**	**5,98,76,800**	**4,93,73,200**

6. The CCTV footage of the billing counters of the Kozhikode showroom for five sample days (the footage retained on the DVR was imaged on 24.02.2026) was counted by two officers, in the presence of panch witnesses, as the number of transactions concluded at the billing counters, and compared with the number of invoices (Mode A) and estimate slips in the POS database on those days. The two sets reconcile, with only a small number of non-sale events (price enquiries, exchanges) left over:

Date	Transactions counted on CCTV	GST invoices in POS	Estimate slips in POS	Non-sale events
03.10.2025	388	271	115	2
18.10.2025	512	336	174	2
20.10.2025	571	369	199	3
16.11.2025	347	233	112	2
24.01.2026	329	224	103	2

7. Statements were recorded under Section 70 of the CGST Act, 2017: (i) **Mr. Q** on 25.02.2026, who stated that the estimate mode had been introduced from 01.04.2025 on the Managing Director's instruction, that it was used for customers who did not ask for a GST bill and, in the ordinary course, for all UPI and cash walk-ins at Counter 2, that he got a 'handling incentive' of 0.25% of the estimate sales in cash every month, that he ran the purge utility on 21.02.2026 on the telephonic advice of the vendor's engineer, and that the cash was handed over weekly to Mr. Z's driver against the closing reports; (ii) **Mr. P** on 25.02.2026, who stated that he had written the 'Estimate/Quick Sale' module on the request of Mr. Z for Rs.1,80,000/- (vendor invoice dated 28.03.2025 for 'customisation'), delivered it on 28.03.2025, trained the managers, and advised Mr. Q on 21.02.2026 over the telephone to purge the old data; and (iii) **Mr. Z** on 26.02.2026, who accepted that he had asked for a second counter for customers who 'do not want a GST bill', that he received the daily closing reports, and that cash was brought to his residence. He stated that the quantum was lower than that in the reports; he produced no records in support. On 05.03.2026 Mr. Z wrote a letter retracting his statement as having been made under pressure; no complaint was made at the time of the statement.

8. The mobile phone of Mr. Z, produced during the statement and imaged with his consent, contains a WhatsApp group named 'Daily Closing' (the Managing Director, the three managers and the accountant), in which each manager posted every night the 'Estimate sale' of the day, the UPI part and the cash handed over; the figures of the group chat for the period reconcile with the EST_BILL totals above for 94% of the days (the rest have rounding or late postings). Extracts of the files and the chat have been certified; a certificate under Section 145 of the CGST Act, 2017 and a certificate under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023, in the prescribed format, with the hash values, signed by the Superintendent in charge of the imaging and by the forensic expert, have been obtained.

9. The Company's accounts were not seized; the Company's GSTR-3B returns for April 2025 to January 2026 show the output tax only on the invoiced sales. The Company furnished no FORM GSTR-1 or GSTR-3B for the estimate sales, and the return for February 2026 (due on 20.03.2026) was likewise limited to invoiced sales. After the search the estimate mode was disabled and all sales since 24.02.2026 are on GST invoices. By an order dated 06.03.2026 the Commissioner provisionally attached one bank account of the Company under Section 83. Show-cause notices are being prepared and the matter is to be dealt with in a single notice.

10. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Mobile Hub Pvt. Ltd. and the other persons concerned (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against the Company, Mr. Z, Mr. Q and M/s AAA Software Solutions (under heading Consequences of Contravention of legal Provisions), and examine whether prosecution under Section 132 is warranted.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued, listing the proposed action to be taken against each noticee.

(iv) Also prepare the draft Show Cause Notice for issuance.

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SUGGESTED SOLUTION

(Search under Section 67, forensic evidence, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Mobile Hub Pvt. Ltd., Mr. Z, Mr. Q and M/s AAA Software Solutions, Kozhikode CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened by the Company in respect of the estimate-mode supplies of goods (in each case read with the corresponding provisions of the Kerala Goods and Services Tax Act, 2017 [KGST Act] and the Rules made under the two Acts):

1. **Section 31(1) of the CGST Act, 2017 read with Rule 46** - the Company supplied taxable goods and did not issue a tax invoice, at or before the delivery of the goods, showing the description, quantity and value of the goods, the tax charged and the other particulars; only an 'estimate' slip was handed over. Rule 46A is not attracted, since there was no mixed supply of taxable and exempt goods.
2. **Section 33** - the estimate slips, which were the documents issued in relation to the supply, did not show the amount of tax forming part of the price, as every registered person supplying taxable goods must prominently indicate in the tax invoice and other like documents.
3. **Section 9(1)** - non-payment of tax at 18% (9% CGST and 9% KGST) on the supplies of goods of the aggregate value of Rs.9,25,84,747/- made through the estimate mode, and **Sections 37(1) and 39(1)** - the supplies were not declared in FORM GSTR-1 and the tax was not paid in FORM GSTR-3B for the tax periods April 2025 to February 2026.
4. **Section 35(1) read with Rule 56, and Section 36** - the Company failed to keep a record of the outward supplies of goods in the estimate mode in the books of account at the registered place of business, and, after the records had been created, failed to retain them for the period of seventy-two months from the due date of the annual return (the data were deleted from the Kozhikode server by the purge utility on 21.02.2026, after the test purchases).

Note: *Section 76 is not attracted as no amount was collected 'as tax': the customers paid the displayed price only. Section 129 and Section 130 are not attracted as the goods were not in transit and were not seized. No input tax credit or refund is involved.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the Company and the other persons concerned to the following action under the CGST Act, 2017 (read with the corresponding provisions of the KGST Act, 2017):

1. Determination and recovery of tax - under **Section 74A(1) of the CGST Act, 2017** (and the KGST Act). The supplies were made in April 2025 to February 2026 (FY 2025-26), for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so the notice may be issued up to 30.06.2030 [Section 74A(2)]; the order must be passed within twelve months of the notice, extendable by six months [Section 74A(7)]. The valuation is as follows: the customers paid a fixed price and no tax was charged separately; since the displayed prices are the prices at which the goods were sold, the receipts are treated as **inclusive of tax** and the tax is worked out as receipts x 18/118. The value is therefore Rs.9,25,84,747/- and the tax is Rs.1,66,65,254/- (CGST Rs.83,32,627 + KGST Rs.83,32,627).
2. Interest - under **Section 50(1)** at 18% per annum on the tax of each month from the day after the due date of FORM GSTR-3B for that month (the 20th of the following month) till payment. Illustratively, to 30.11.2026, interest is Rs.33,36,192/- (month-wise working below).
3. Penalty on the Company - under **Section 74A(5)(ii)**, a penalty equal to the tax, Rs.1,66,65,254/- (CGST Rs.83,32,627 and KGST Rs.83,32,627). The non-payment is by reason of fraud and suppression of facts, and the evidence is specific and not inferential: the second mode of the software was commissioned for Rs.1,80,000/- from the vendor (vendor invoice 28.03.2025) just before the year began; it was enabled only by a code known to the manager; the closing report was split into 'Total' and 'GST' sale and mailed to the Managing Director; the estimate receipts were routed to a separate UPI QR and bank account;

the cash was handed over weekly to the Managing Director's driver; the manager received 0.25% of the estimate sales in cash as incentive; and the data were purged on 21.02.2026 after the test purchases. The conduct is not an error of law; every element points to a design to avoid invoicing. The concessions of **Section 74A(9)** (15% before the notice, 25% within 60 days of the notice, 50% within 60 days of the order, with tax and interest) are available.

4. Specific offence penalties - **Section 122(1)(i)** (supplies goods without issue of invoice), **Section 122(1)(xv)** (suppresses turnover leading to evasion of tax) and **Section 122(1)(xvi)** (fails to keep, maintain or retain books of account and other documents in accordance with the Act or the rules - the purge of the data) are attracted. As a penalty is proposed under Section 74A(5)(ii), the penalties under clauses (i) and (xv) are proposed in the alternative and without prejudice, subject to Section 75(13) and Section 126; the penalty under clause (xvi) (the higher of Rs.10,000 and the tax evaded under the opening words of Section 122(1)) is proposed in respect of the retention default, again subject to Section 75(13) and for the same reason: if the penalty under Section 74A(5)(ii) is sustained, no separate penalty is imposed for the same act of suppression. The Chart's description of the clause (i) penalty as 'may extend to Rs.25,000' is not the text of Section 122(1), which prescribes the higher of Rs.10,000 and the tax evaded; the ceiling of Rs.25,000 is that of Section 122(3).

5. Other persons concerned - (a) **Mr. Z**: Section 122(1A) - a person who retains the benefit of a transaction covered by clause (i) of Section 122(1) and at whose instance it is conducted is liable to a penalty equal to the tax evaded, i.e. Rs.1,66,65,254/-. He commissioned the module, received the closing reports and the cash and is therefore proposed as the person at whose instance the transaction was conducted. (b) **Mr. Q** and **M/s AAA Software Solutions (Mr. P, proprietor)**: **Section 122(3)(a)** - aiding or abetting an offence specified in clause (i) of Section 122(1): up to Rs.25,000/- each under the CGST Act and the KGST Act. Mr. Q operated the second mode, took an incentive and purged the data; the vendor wrote the module and advised the purge. The penalty on the abettors is deliberately kept at the ceiling of Section 122(3) and not higher, since the substantial penalty is on the Company and Mr. Z (Explanation 1 to Section 74A: if the Company pays under Section 74A(9) within the time, the proceedings against the other persons under Sections 122(1A) and 122(3) stand concluded).

6. Recovery and protection of revenue - Sections 78 and 79. The provisional attachment of one bank account of the Company under **Section 83** was ordered on 06.03.2026 (after proceedings were initiated under Chapter XIV); an attachment ceases to have effect after one year from the order (Section 83(2)), i.e. on 05.03.2027, so the notice and the order should be finalised or the attachment extended by a fresh order before that date.

7. Prosecution under Section 132 - considered; not warranted on the present amount - the offence of supplying goods without invoice with intent to evade tax falls in Section 132(1)(a) (and clause (e) for evasion otherwise). The punishment depends on the amount of tax evaded (CGST plus KGST, as the Explanation to Section 132 takes in the State tax): imprisonment up to five years and fine if it exceeds Rs.5 crore [Section 132(1)(i)], up to three years and fine if it exceeds Rs.2 crore but does not exceed Rs.5 crore [Section 132(1)(ii)], and, in the Rs.1 crore to Rs.2 crore band, up to one year and fine, **but only for an offence under clause (b)** (issuing an invoice without supply) [Section 132(1)(iii), as amended with effect from 01.10.2023, as given in Template XI of the Chart]. The tax evaded here is Rs.1,66,65,254/-, which exceeds Rs.1 crore but does not exceed Rs.2 crore; clause (a) is not in the Rs.1 crore tier, so no punishment tier applies and prosecution is not available on the present amount. Arrest under Section 69 (which needs an offence under clauses (a) to (d) punishable under Section 132(1)(i) or (ii)) is also not available. The investigation will, however, check the earlier period (the estimate module was delivered on 28.03.2025, so FY 2024-25 appears clean), and any further tax evaded which takes the total above Rs.2 crore would bring the case within Section 132(1)(ii) (up to three years; non-cognizable and bailable, since only offences punishable under tier (i) are cognizable and non-bailable [Section 132(4)/(5)]); the Commissioner's sanction under Section 132(6) would then be required, and the civil notice does not bar it (Explanation 1 to Section 74A excludes Section 132).

8. Alternative routes (not adopted) - assessment under Section 63 does not arise since the Company is registered; Section 62 (best judgment) does not arise since the returns were filed; Section 130 does not arise for want of seized goods.

Illustrative working of the tax and interest (month-wise; tax = receipts x 18/118; interest at 18% to

30.11.2026):

Tax period	Estimate receipts (Rs.)	Taxable value (Rs.)	Tax (Rs.) (CGST = KGST)	Due date GSTR-3B	Interest @18% (Rs.)
April 2025	88,40,000	74,91,525	13,48,474	20.05.2025	3,71,735
May 2025	94,10,000	79,74,576	14,35,424	20.06.2025	3,73,761
June 2025	91,60,000	77,62,712	13,97,288	20.07.2025	3,43,159
July 2025	97,30,000	82,45,763	14,84,238	20.08.2025	3,41,822
August 2025	1,02,70,000	87,03,390	15,66,610	20.09.2025	3,36,843
September 2025	1,08,20,000	91,69,492	16,50,508	20.10.2025	3,30,463
October 2025	1,36,50,000	1,15,67,797	20,82,204	20.11.2025	3,85,065
November 2025	1,04,80,000	88,81,356	15,98,644	20.12.2025	2,71,988
December 2025	1,01,90,000	86,35,593	15,54,406	20.01.2026	2,40,699
January 2026	96,40,000	81,69,492	14,70,508	20.02.2026	2,05,227
February 2026 (1st to 23rd)	70,60,000	59,83,051	10,76,950	20.03.2026	1,35,430
TOTAL	**10,92,50,000**	**9,25,84,747**	**1,66,65,254**		**33,36,192**

Summary of the proposed action:

Noticee and provision	CGST (Rs.)	KGST (Rs.)	Total (Rs.)
Company - tax, Section 74A(1)	83,32,627	83,32,627	1,66,65,254
Company - penalty, Section 74A(5)(ii)	83,32,627	83,32,627	1,66,65,254
Mr. Z - penalty, Section 122(1A) (equal to the tax evaded)	83,32,627	83,32,627	1,66,65,254
Mr. Q - penalty, Section 122(3)(a)	25,000	25,000	50,000
M/s AAA Software Solutions - penalty, Section 122(3)(a)	25,000	25,000	50,000
TOTAL tax and penalties (interest of Rs.33,36,192 extra)	**2,50,47,881**	**2,50,47,881**	**5,00,95,762**

Basis: *The Company's receipts are treated as tax-inclusive. In Exercise-52 (casual taxable person), where the supplier had quoted a 'without bill' price, the value was taken as the amount actually received (the cum-tax benefit being left to adjudication); here the benefit is given in the notice itself, as the Department would otherwise be demanding tax on tax on fixed retail prices; the Company may still contend that the prices are exclusive of tax, which it must prove. The central tax of Rs.83,32,627/- falls in the range of the Deputy/Assistant Commissioner (above Rs.10 lakh up to Rs.1 crore).*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, (1) M/s XXX Mobile Hub Pvt. Ltd., Kozhikode, Kerala (GSTIN 32AAAAA0000A1Z5), through Mr. Z, its Managing Director; (2) Mr. Z, Managing Director, in his personal capacity; (3) Mr. Q, Manager, Kozhikode showroom; and (4) M/s AAA Software Solutions, Kozhikode, through its proprietor Mr. P, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Kozhikode (Calicut) CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the goods of the aggregate value of Rs.9,25,84,747/- supplied by M/s XXX Mobile Hub Pvt. Ltd. through the estimate mode of its billing software from 01.04.2025 to 23.02.2026, for a consideration of Rs.10,92,50,000/-, should not be held to be taxable supplies of goods made

without issue of tax invoices, in contravention of Sections 31(1), 33, 9(1), 35(1), 36, 37(1) and 39(1) of the CGST Act, 2017/KGST Act, 2017 and Rules 46 and 56;

(ii) an amount of Rs.83,32,627/- (Central tax) and Rs.83,32,627/- (Kerala State tax), total Rs.1,66,65,254/- (Rupees One Crore Sixty-Six Lakh Sixty-Five Thousand Two Hundred and Fifty-Four only), being the tax not paid on the value at (i), should not be demanded and recovered from M/s XXX Mobile Hub Pvt. Ltd. under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the KGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/KGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the day after the due date of FORM GSTR-3B of the respective tax period till the date of payment;

(iv) a penalty of Rs.1,66,65,254/- (Central tax Rs.83,32,627 and Kerala State tax Rs.83,32,627), being equal to the tax due, should not be imposed on M/s XXX Mobile Hub Pvt. Ltd. under Section 74A(5)(ii) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on M/s XXX Mobile Hub Pvt. Ltd. under Section 122(1)(i), Section 122(1)(xv) and Section 122(1)(xvi) of the CGST Act, 2017/KGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017;

(vi) a penalty equal to the tax evaded, Rs.1,66,65,254/- (Central tax Rs.83,32,627 and Kerala State tax Rs.83,32,627), should not be imposed on Mr. Z under Section 122(1A) of the CGST Act, 2017/KGST Act, 2017;

(vii) a penalty of Rs.25,000/- under the CGST Act, 2017 and Rs.25,000/- under the KGST Act, 2017 should not be imposed on each of Mr. Q and M/s AAA Software Solutions under Section 122(3)(a) of the CGST Act, 2017/KGST Act, 2017, for aiding and abetting the offence under Section 122(1)(i).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-KKD

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Kozhikode (Calicut) CGST Commissionerate, Kerala

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Kerala Goods and Services Tax Act, 2017)

To,
1. M/s XXX Mobile Hub Pvt. Ltd. (GSTIN 32AAAAA0000A1Z5), YYYY, Kozhikode, Kerala, through Mr. Z, Managing Director;
2. Mr. Z, Managing Director and promoter of M/s XXX Mobile Hub Pvt. Ltd., YYYY, Kozhikode, in his personal capacity;
3. Mr. Q, Manager, Kozhikode showroom of M/s XXX Mobile Hub Pvt. Ltd., YYYY, Kozhikode;
4. M/s AAA Software Solutions, YYYY, Kozhikode, through its proprietor Mr. P.

(hereinafter referred to as 'Noticee No. 1' (the Company), 'Noticee No. 2' (Mr. Z), 'Noticee No. 3' (Mr. Q) and 'Noticee No. 4' (M/s AAA), and collectively as 'the Noticees')

WHEREAS Noticee No. 1 is a registered person engaged in the retail supply of mobile phones and accessories (taxable at 18%) through three showrooms at Kozhikode, Malappuram and Kannur, and uses the billing software 'AAA-POS' supplied and supported by Noticee No. 4 (RUD-1). On intelligence, test purchases were made by two officers on 12.02.2026 at the three showrooms before two independent witnesses, as ordinary customers; at Kozhikode and Malappuram only 'ESTIMATE' slips without GSTIN, invoice number or tax were issued for the purchases (a power bank and earphones), and at Kannur a GST invoice was issued (RUD-2);

2. AND WHEREAS on the authorisation of the Joint Commissioner in FORM GST INS-01 dated 23.02.2026 (RUD-3), a search under Section 67 of the Act was conducted on 24.02.2026 at the three showrooms and the registered office of Noticee No. 1, in the presence of panch witnesses, and the POS servers of all four places were imaged by the cyber forensic team with write-blockers, the hash values being recorded in the panchnama (RUD-4). It was found that AAA-POS ran in two modes, a 'Tax Invoice' mode and an 'Estimate/Quick Sale' mode, which was enabled by a code known to the manager; that in the Estimate mode the stock was reduced, the sale was stored in the separate table EST_BILL, no tax was calculated and the amount was not carried to the GST sales register; and that the closing report mailed to Noticee No. 2 gave two totals, 'Total Sale' and 'GST Sale' (RUD-5);

3. AND WHEREAS the audit log of the Kozhikode server shows that on 21.02.2026, after the test purchases, the utility 'Purge estimate data older than 90 days' was run and the estimate data of April 2025 to November 2025 were deleted, and that the data of those months were recovered from the nightly backup disk at the registered office and the vendor's remote-support server, imaged on 24.02.2026 and 25.02.2026, the three sources being identical for the common period (RUD-6);

4. AND WHEREAS the EST_BILL data show estimate-mode sales (receipts, no tax having been charged) of Rs.10,92,50,000/- from 01.04.2025 to 23.02.2026, of which Rs.5,98,76,800/- is by UPI (reconciled with the settlement statements of the bank and the payment aggregator for the second QR code, RUD-7) and Rs.4,93,73,200/- in cash, as against the invoiced sales declared in FORM GSTR-1/GSTR-3B (month-wise table at Annexure-A). The CCTV footage of the billing counter of the Kozhikode showroom for five sample days (03.10.2025, 18.10.2025, 20.10.2025, 16.11.2025 and 24.01.2026) was counted before panch witnesses and reconciles with the sum of the GST invoices and estimate slips for those days (RUD-8);

5. AND WHEREAS in his statement recorded on 25.02.2026 under Section 70 (RUD-9), Noticee No. 3 stated that the estimate mode was introduced from 01.04.2025 on the instruction of the Managing Director, was used for customers who did not ask for a GST bill and for UPI and cash walk-ins at Counter

2, that he received a 'handling incentive' of 0.25% of the estimate sales in cash every month, that he ran the purge utility on 21.02.2026 on the telephonic advice of the vendor's engineer, and that the cash was handed over weekly to the driver of Noticee No. 2 against the closing reports;

6. AND WHEREAS Noticee No. 4, through Mr. P, in his statement of 25.02.2026 (RUD-10) stated that the 'Estimate/Quick Sale' module was written at the request of Noticee No. 2 for Rs.1,80,000/- (vendor invoice dated 28.03.2025 for 'customisation'), delivered on 28.03.2025, that the managers were trained to use it, and that Mr. Q was advised on 21.02.2026 to purge the old data; and Noticee No. 2, in his statement of 26.02.2026 (RUD-11), accepted that he had asked for a second counter for customers who 'do not want a GST bill', that he received the daily closing reports and that the cash was brought to his residence. His letter dated 05.03.2026 retracting the statement as made under pressure does not mention any complaint made at the time and is contradicted by the independent evidence in paragraphs 2 to 4, and by the 'Daily Closing' WhatsApp group on his mobile telephone (imaged with his consent), whose figures reconcile with the EST_BILL totals for 94% of the days (RUD-12). The electronic records are accompanied by a certificate under Section 145 of the Act and a certificate under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023, with the hash values (RUD-13);

7. AND WHEREAS the receipts being the fixed price at which the goods were sold and no tax having been charged, the receipts are treated as inclusive of tax, and the taxable value of the estimate-mode supplies is Rs.9,25,84,747/-, on which the tax at 18% (9% CGST + 9% KGST) is Rs.83,32,627/- each under the CGST Act and the KGST Act, total Rs.1,66,65,254/- (Annexure-A);

8. AND WHEREAS Noticee No. 1 supplied taxable goods without issuing tax invoices, did not show the tax in the documents issued, did not declare the supplies in FORM GSTR-1 or pay tax in FORM GSTR-3B, kept the sales in a hidden table and deleted the data after the test purchases. The second mode of the software was commissioned just before the year began, its use was restricted by a code, the receipts were routed to a separate QR code and bank account, the cash was handed to Noticee No. 2's driver and the manager was paid an incentive. It therefore appears that the non-payment of tax was by reason of fraud and suppression of facts with intent to evade tax, attracting penalty under Section 74A(5)(ii) of the Act;

9. AND WHEREAS it appears that Noticee No. 2 commissioned the module, received the closing reports and the cash and is a person at whose instance the transactions were conducted and who retained the benefit, liable to a penalty under Section 122(1A) of the Act; and that Noticee No. 3, who operated the second mode, took an incentive and purged the data, and Noticee No. 4, who wrote the module and advised the purge, aided and abetted the supply of goods without issue of invoice, and are liable to penalty under Section 122(3)(a) of the Act;

10. AND WHEREAS it thus appears that Noticee No. 1 has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the KGST Act, 2017):

- Section 31(1) read with Rule 46 - failure to issue tax invoices;
- Section 33 - failure to indicate the amount of tax in the documents issued;
- Section 9(1) - non-payment of tax on the outward supplies of goods;
- Sections 37(1) and 39(1) - failure to furnish FORM GSTR-1 and FORM GSTR-3B for the estimate sales and to pay the tax;
- Section 35(1) read with Rule 56 and Section 36 - failure to keep and to retain the records of the outward supplies;

11. AND WHEREAS the aforesaid acts and omissions render the Noticees liable to: (a) demand and recovery of tax from Noticee No. 1 under Section 74A of the CGST Act, 2017/KGST Act, 2017; (b) interest under Section 50(1); (c) penalty on Noticee No. 1 under Section 74A(5)(ii); (d) penalty on Noticee No. 1 under Sections 122(1)(i), 122(1)(xv) and 122(1)(xvi) (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c)); (e) penalty on Noticee No. 2 under Section 122(1A); and (f) penalty on Noticees Nos. 3 and 4 under Section 122(3)(a);

NOW, THEREFORE

Noticee Nos. 1 to 4 are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - [•], Kozhikode (Calicut) CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the goods of the aggregate value of Rs.9,25,84,747/- supplied by Noticee No. 1 through the estimate mode of its billing software from 01.04.2025 to 23.02.2026, for a consideration of Rs.10,92,50,000/-, should not be held to be taxable supplies of goods made without issue of tax invoices, in contravention of Sections 31(1), 33, 9(1), 35(1), 36, 37(1) and 39(1) of the CGST Act, 2017/KGST Act, 2017 and Rules 46 and 56;

(ii) an amount of Rs.83,32,627/- (Central tax) and Rs.83,32,627/- (Kerala State tax), total Rs.1,66,65,254/- (Rupees One Crore Sixty-Six Lakh Sixty-Five Thousand Two Hundred and Fifty-Four only), being the tax not paid on the value at (i), as detailed in Annexure-A, should not be demanded and recovered from Noticee No. 1 under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the KGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/KGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the day after the due date of FORM GSTR-3B of the respective tax period till the date of payment;

(iv) a penalty of Rs.1,66,65,254/- (Central tax Rs.83,32,627 and Kerala State tax Rs.83,32,627), being equal to the tax due, should not be imposed on Noticee No. 1 under Section 74A(5)(ii) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on Noticee No. 1 under Section 122(1)(i), Section 122(1)(xv) and Section 122(1)(xvi) of the CGST Act, 2017/KGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017;

(vi) a penalty equal to the tax evaded, Rs.1,66,65,254/- (Central tax Rs.83,32,627 and Kerala State tax Rs.83,32,627), should not be imposed on Noticee No. 2 under Section 122(1A) of the CGST Act, 2017/KGST Act, 2017;

(vii) a penalty of Rs.25,000/- under the CGST Act, 2017 and Rs.25,000/- under the KGST Act, 2017 should not be imposed on each of Noticee No. 3 and Noticee No. 4 under Section 122(3)(a) of the CGST Act, 2017/KGST Act, 2017, for aiding and abetting the offence under Section 122(1)(i).

12. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits; the Noticees may seek the forensic image copies and the cross-examination of the persons whose statements are relied upon, in accordance with law;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and each Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/KGST Act, 2017 (penalty at 15% of the tax if paid before the notice, 25% within 60 days of the notice, 50% within 60 days of the order, with tax and interest), on payment of which, in terms of Explanation 1 to Section 74A, all proceedings in respect of the said notice against Noticee No. 1 and the proceedings against the other Noticees under Sections 122(1A) and 122(3) are deemed to be concluded; prosecution under Section 132 is not covered;
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017/KGST Act, 2017, or any other law for the time being in force, including action for any period or place not covered by this notice and the provisional attachment under Section 83, and subject to Section 75(13) and Section 126.

List of Relied Upon Documents (RUDs):

RUD-1: Registration particulars of Noticee No. 1; licence and annual maintenance contract with M/s AAA Software Solutions; GSTR-1/GSTR-3B for April 2025 to February 2026;

RUD-2: Test-purchase mahazars dated 12.02.2026 with the slips and the invoice;

RUD-3: Authorisation in FORM GST INS-01 dated 23.02.2026;

RUD-4: Panchnama dated 24.02.2026 of the search and of the forensic imaging (with hash values);

RUD-5: Extracts of the AAA-POS configuration, the EST_BILL table and the closing (Z) reports;

RUD-6: Audit log extract (purge of 21.02.2026) and the forensic comparison report of the server, the backup disk and the vendor's server;

RUD-7: Settlement statements of the bank and the payment aggregator for the second QR code;

RUD-8: CCTV counting report for five sample days at the Kozhikode showroom;

RUD-9: Statement of Mr. Q recorded on 25.02.2026 under Section 70;

RUD-10: Statement of Mr. P recorded on 25.02.2026 under Section 70, with the vendor's invoice dated 28.03.2025;

RUD-11: Statement of Mr. Z recorded on 26.02.2026 under Section 70 and his letter dated 05.03.2026;

RUD-12: Extract of the WhatsApp group 'Daily Closing' from the mobile telephone of Mr. Z;

RUD-13: Certificates under Section 145 of the CGST Act, 2017 and Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023;

Annexure-A: Month-wise statement of invoiced sales, estimate-mode receipts, taxable value, tax and interest [as per the table in the Situation and the working in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Kozhikode (Calicut) CGST Commissionerate

Copy to: The Additional/Joint Commissioner, CGST, Kozhikode Commissionerate, for information.

Drafting note (not part of the notice):

- *The addressees, GSTINs, jurisdictional division/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The Company, M/s AAA Software Solutions and the individuals are fictional.*
- ***Teaching point - electronic evidence of a hidden sales mode.*** *The proof is not a set of parallel books (Exercise-14, where a second set of Tally books was found and the entire turnover in it taxed) or a price collected over and above the invoice (Exercise-13, on-money, where an invoice exists for each sale and the question is the value), but a software feature through which a part of the sales never gets an invoice. It is proved from the machine itself (database, audit log, backups), from independent third-party data (bank/aggregator settlements), from physical corroboration (CCTV counts, test purchases) and only lastly from the statements. The quantum must reconcile month by month with at least two independent sources, and each source must be capable of being certified.*
- ***Law on electronic records.*** *(a) Section 36 (retention of accounts and records for seventy-two months from the due date of the annual return) makes the deletion of records an offence in itself; (b) in proceedings under the GST Acts, Section 145 of the CGST Act (computer printouts and electronically stored information are deemed documents and are admissible, with a certificate under Section 145(2)) applies; (c) for a prosecution or any proceeding in a court, Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 (in force from 01.07.2024), the successor of Section 65B of the Indian Evidence Act, 1872, requires a certificate under Section 63(4) in the format of the Schedule, given by the person in charge of the device (with the hash value) and by an expert. It is prudent to take both certificates at the time of imaging, to record the hash values in the panchnama, and to keep the original media sealed. The sections have been cited from secondary sources and should be checked against the current text before the notice is issued.*

- ***Test purchases and mahazar - what is legally safe.*** *The CGST Act contains no express provision on test purchases (none was located). They are made on the strength of the general power of the officer to collect evidence and are valid as corroboration so long as the officers act as ordinary members of the public: pay the displayed price, ask for no concession and do not induce the seller to depart from the law. The mahazar should be signed by two independent witnesses and the slips and receipts sealed. Test purchases cannot by themselves prove the quantum and are not relied on for it; the quantum rests on the database, the aggregator data and the corroboration. Where the Company's version is that the slips were given only on the customer's request for a lower price, the test purchase made without such a request answers it.*
- ***Fraud penalty and persons concerned.*** *The penalty on the Company is under Section 74A(5)(ii) (fraud proved from specific evidence, as in Exercises 49/52), and Section 122(1A) is applied to Mr. Z because the Managing Director both initiated the scheme and retained the cash; the abettors (Section 122(3)(a)) are the manager and the vendor. Compare Exercise-63, where Section 122(1A) was considered and not proposed since the evidence of the MD's instruction was only hearsay. The retraction of the statement is dealt with by showing that the case does not depend on it; the statement is used under Section 136 only to the extent permitted (and if prosecution is later launched, the court's presumption under Section 135 will depend on the independent evidence).*
- ***Rate and the Chart.*** *The rate of 18% for mobile phones and accessories could not be re-verified against the notification for the period (the rate structure was revised from 22.09.2025) and must be checked item by item (covers, chargers, power banks, earphones) before issue; the Chart's reference to 'Rs.25,000' as the penalty under Section 122(1)(i) (Template III.A, row 1) is not the text of Section 122(1): the penalty is the higher of Rs.10,000 and the tax evaded (Rs.25,000 is the ceiling of Section 122(3)). The tier of Section 132 for clause (a) has been taken from Template XI and from the Act as amended; it should be re-read in the current text before it is said that prosecution is not available.*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.83,32,627/-, within the Deputy/Assistant Commissioner's limit; the authorisation of the search under Section 67 had to be by an officer not below the rank of Joint Commissioner.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 65

Invoices issued for own supplies by using the GSTIN of another registered person for commission - Rule 46, Section 122(1)(xix), Section 122(3)(a) and demand under Section 74A

Exercise 65: Invoices issued for own supplies by using the GSTIN of another registered person for commission - Rule 46, Section 122(1)(xix), Section 122(3)(a) and demand under Section 74A

Situation in Brief:

1. M/s AAA Enterprises, a proprietary concern of Mr. P, situated at Sector [•], Faridabad, Haryana, is registered under the CGST Act, 2017/HGST Act, 2017 (GSTIN 06AAAPP0000A1ZP, hereinafter 'the GSTIN') since 2019 as a small trader in electrical goods. Its own turnover is about Rs.2 lakh to Rs.2.5 lakh a month. Data analytics of the e-way bill portal and the GSTR-1/GSTR-3B returns, reported on 04.09.2025, showed that from October 2024 the GSTIN had generated a large number of e-way bills for consignments of insulated electric cables and wires (HSN 8544, taxable at 18%) from a place in Ballabgarh, Faridabad, which is not shown as the principal or an additional place of business of M/s AAA Enterprises. GSTR-1 of the GSTIN for April to August 2025 reported B2B supplies of Rs.3,61,00,000/- to three dealers in Haryana in addition to the small own sales of M/s AAA Enterprises, but the GSTR-3B of the GSTIN for the same months showed only its own small supplies and tax of a few thousand rupees a month, paid mostly through input tax credit.

2. On 18.09.2025 the premises at Plot [•], Industrial Area, Ballabgarh, Faridabad (a godown rented in the name of Mr. Z) were searched under Section 67 of the CGST Act, 2017 under the authorisation of the Additional/Joint Commissioner. The godown held cable stock of about Rs.58 lakh. The search recovered (a) two mobile phones of Mr. Z (the contents were copied in his presence and hash values recorded in the panchnama), (b) a desk computer and a laptop, (c) 27 purchase bill files, all of cables purchased from manufacturers and traders in Delhi in the name of 'Z Traders, Ballabgarh' without any GSTIN, (d) a diary with day-wise entries of 'bills made' and 'commission to P', and (e) a cheque book and passbook of a current account of Mr. Z with a bank at Ballabgarh. No registration (regular or composition) exists against the PAN of Mr. Z, who also uses the trade name M/s XXX Traders (unregistered). Summons under Section 70 were issued to Mr. Z on 19.09.2025 and to Mr. P on 23.09.2025.

3. In his statement recorded on 22.09.2025 under Section 70 of the CGST Act, 2017, Mr. Z stated that he has been trading in cables from the Ballabgarh godown since 2022 and has never been registered; that till September 2024 he sold mostly to unregistered buyers, but dealers in Faridabad and Gurugram insisted on a GST invoice so that they could take input tax credit; that in October 2024 his friend Mr. P offered him the use of the GSTIN of M/s AAA Enterprises for a commission of 1% of the invoice value; that he buys the cables in his own name from Delhi, stores and sells them from his own godown, fixes the prices, and receives the payment from the buyers in his own bank account; that his own employee prepares the invoices in the name of M/s AAA Enterprises on billing software, generates the e-way bills on the e-way bill portal and uploads the invoices for GSTR-1 using the login credentials of Mr. P, the one-time passwords being sent to him by Mr. P on WhatsApp; that the tax shown on the invoices was never deposited by him or, to his knowledge, by anyone else; that he did not get himself registered because he did not want to pay tax and 'wanted to compete on price'; and that he paid Mr. P the commission every month by transfer from his account.

4. In his statement recorded on 25.09.2025 under Section 70, Mr. P admitted that he gave Mr. Z the user ID, password and the OTP of the GSTIN, that the GST portal OTPs came to his mobile number and that he forwarded them on request; that he received 1% of the invoice value every month from Mr. Z; that he has never purchased or sold the cables covered by those invoices, has no stock of them and has never visited the Ballabgarh godown; and that his accountant filed his GSTR-3B every month on the basis of his own sales only. He claimed that Mr. Z had 'promised to deposit the tax in my cash ledger' and that he did not check the ledger. The cash ledger of the GSTIN shows no deposit other than a few thousand rupees a month paid for his own supplies.

5. The e-way bill portal data for the GSTIN, obtained from the NIC, shows that all 222 e-way bills for April to August 2025 against these invoices were generated from two static IP addresses; the reply of the internet service provider dated 06.10.2025 to a summons under Section 70 shows that both IP addresses belong to a broadband connection installed at the Ballabgarh godown in the name of Mr. Z. The 35 e-way bills for the own supplies of M/s AAA Enterprises during the same period were generated from a different IP address in Faridabad. The WhatsApp chats between the two mobile phones, copied

on 18.09.2025, contain over 300 messages of the type 'bhai aaj ke 6 bill ka OTP bhej do' (Mr. Z) followed by a six-digit number (Mr. P), and monthly messages of the type 'commission bhej diya' / 'mil gaya'. The lorry receipts and FASTag records of the vehicles named in the e-way bills show the Ballabgarh godown as the place of loading.

6. The bank statements of Mr. Z show that the three dealers paid Mr. Z's current account the full invoice value including tax, and that Mr. Z transferred to the account of Mr. P, in the first week of each following month, 1% of the taxable value of that month's invoices. Month-wise details of the invoices issued under the GSTIN on behalf of Mr. Z (the 'Z invoices') are as follows:

Month	Invoices / e-way bills (No.)	Taxable value (Rs.)	Tax at 18% (Rs.)	Commission to Mr. P (Rs.)
April 2025	38	62,40,000	11,23,200	62,400
May 2025	44	71,10,000	12,79,800	71,100
June 2025	51	80,25,000	14,44,500	80,250
July 2025	47	77,50,000	13,95,000	77,500
August 2025	42	69,75,000	12,55,500	69,750
TOTAL	**222**	**3,61,00,000**	**64,98,000**	**3,61,000**

7. The Z invoices carried tax at 18% (9% central tax and 9% Haryana State tax) and were issued to three registered dealers in Haryana, who availed input tax credit on them in their GSTR-3B for the same months on the basis of GSTR-2B. Their statements were recorded on 08.10.2025, 09.10.2025 and 10.10.2025 respectively under Section 70: each stated that the goods were received at its premises from the Ballabgarh godown; that they were introduced to Mr. Z as 'the manager of AAA Enterprises'; that they paid the money to the current account of Mr. Z 'as told by the manager' and did not notice that it was not the account of M/s AAA Enterprises; and that they had no knowledge that the tax was not being paid. The recipients are as follows:

Recipient	Town	Invoices (No.)	Taxable value (Rs.)	ITC availed (Rs.)
M/s BBB Electricals	Gurugram	96	1,55,00,000	27,90,000
M/s CCC Traders	Palwal	71	1,18,00,000	21,24,000
M/s DDD Agencies	Faridabad	55	88,00,000	15,84,000
TOTAL		**222**	**3,61,00,000**	**64,98,000**

8. Mr. Z has not filed any return, has not deposited any amount of tax, and had a turnover under the Z invoices of Rs.62,40,000/- in April 2025 itself, i.e. above the threshold of Rs.40 lakh for suppliers of goods. Cheque and cash receipts from sales to unregistered buyers during the same period are not covered by this notice and are being separately examined, as is the period from October 2024 to March 2025. The Department proposes to deal with the recipients of the Z invoices separately.

9. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by Mr. Z and Mr. P (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against Mr. Z and Mr. P (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to Mr. Z and Mr. P, calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice for issuance to Mr. Z and Mr. P.

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SUGGESTED SOLUTION

(Search and Inquiry under Sections 67 and 70, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - Mr. Z and Mr. P, Faridabad CGST Commissionerate)

A. CONTRAVENTION

The first step is to find who made the supplies. A supply is made by the person who, in the course of his business, supplies the goods for consideration [Section 7(1)(a)]; the 'supplier' is the person supplying the goods, including an agent acting as such on behalf of the supplier [Section 2(105)]. On the evidence, the supplier of the goods under the Z invoices is Mr. Z: he bought the cables in his own name, stored them in his own godown, fixed the prices, sent the vehicles, and received the money in his own account; Mr. P never owned, bought or sold the goods and has no stock of them. Mr. P is not an 'agent' either: he did not carry on the business of supplying or receiving goods on behalf of Mr. Z, but only lent his registration (and OTPs). The name on the invoice is therefore not the test; the substance of the transaction is. On that footing the following provisions stand contravened (in each case read with the corresponding provisions of the Haryana Goods and Services Tax Act, 2017 [HGST Act] and the Rules made under the two Acts):

(1) By Mr. Z (the real supplier - unregistered)

1. **Section 22(1) read with Section 25(1) of the CGST Act, 2017** - failure to obtain registration. Mr. Z is a supplier of goods whose aggregate turnover exceeded Rs.40 lakh (the Z invoices alone were Rs.62,40,000/- in April 2025). He is therefore a 'taxable person' [Section 2(107): a person who is registered or liable to be registered under Section 22 or Section 24]; the liability to tax does not depend on registration.
2. **Section 31(1) read with Rule 46** - an invoice is a document which must show the name, address and GSTIN of the supplier, and a tax invoice is to be issued only by a registered supplier. Mr. Z, who is not registered and had no GSTIN, issued 222 invoices bearing the name and registration number of M/s AAA Enterprises - a registered person other than the supplier.
3. **Section 9(1)** - non-payment of central tax and State tax at 18% on the outward supplies of goods of Rs.3,61,00,000/-.
4. **Sections 37(1) and 39(1)** - no statement of outward supplies and no return in his own capacity; **Section 35(1) read with Rule 56** - no accounts kept (the purchase bills and diary are not books of account of a registered person).

(2) By Mr. P (the lender)

5. Mr. P did not himself issue the Z invoices, so Section 122(1)(xix) is not charged on him. He knowingly handed over the user ID, password and OTPs of his registration, so that Mr. Z could issue the invoices and e-way bills and report them in GSTR-1, and took 1% of the value every month. That is **aiding and abetting the offence under Section 122(1)(xix)** - the contravention for which he is answerable is under **Section 122(3)(a)**. The cash ledger shows that he did not deposit tax for the Z invoices, and he filed his own GSTR-3B with only his own supplies, which shows that he knew that the registration was being used for outside supplies and that the tax was not being paid.

Note: *Section 16(2) is not contravened by the recipients on the facts shown above - they are not noticees. The position of the recipients is discussed under 'Consequences' (item 9). Sections 122(1)(i)/(ii) are not charged: the goods were actually supplied (so no 'invoice without supply'), and the invoices were issued (so the case is not one of supply without invoice); the specific clause for this offence is 122(1)(xix). The case is also not one of Section 76 as a main charge (see Consequences, item 7).*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the two persons to the following action under the CGST Act, 2017 (read with the corresponding provisions of the HGST Act, 2017):

1. Registration - Mr. Z. Unlike the one-off supplier of Exercise-52, Mr. Z is a continuing business. The

proper officer should register him on a temporary basis under **Section 25(8) read with Rule 16(1)** (order in FORM GST REG-12) so that further supplies are made on his own registration and tax is collected in the regular manner. This is a separate administrative step, not a charge in the notice.

2. Registration - Mr. P. The registration of M/s AAA Enterprises has been used to issue invoices for supplies not made by it. Cancellation is called for under **Section 29(2)(a) read with Rule 21(b)** (issues invoice or bill without supply of goods or services) and **Rule 21(f)** (the outward supplies reported in GSTR-1 exceed those declared in the valid return). It is a separate proceeding in FORM GST REG-17 (reply in REG-18, order in REG-19, Rule 22) and is not part of this notice. The cancellation should be prospective: a retrospective cancellation would not help the Revenue and would prejudice the recipients' credit, whose position is separately examined.

3. Demand of tax - against Mr. Z only. Tax is payable by the person who made the supply [Section 9(1): tax is levied on the supply and is 'to be paid by the taxable person']. Mr. Z, being the supplier and a taxable person, is the 'person chargeable with tax' under **Section 74A(1)** (FY 2025-26: Section 74A(12)). Tax of Rs.64,98,000/- (central tax Rs.32,49,000/- and Haryana State tax Rs.32,49,000/-) is demanded. The annual return for FY 2025-26 falls due on 31.12.2026, so a notice can be issued up to 30.06.2030 [Section 74A(2)]; the order is to be passed within twelve months of the notice, extendable by six months [Section 74A(7)]. The earlier period (October 2024 to March 2025) is also in FY 2024-25 and is open to a statement under Section 74A(3) if a notice is served for this period.

4. Can Mr. P be held liable for the tax? The tax is not demanded from Mr. P in this notice, for four reasons: (a) the charge to tax is on the supply, and Mr. P made no supply - he had no goods, no purchase invoices (the purchases are in Mr. Z's name), no stock and received no consideration for the goods; (b) the GSTIN appearing on the invoices is evidence of the offence under Section 122(1)(xix), not proof that its holder is the supplier; (c) a demand of the same tax from two persons would risk double recovery, there being no provision of joint and several liability for tax in such a case; and (d) the Revenue is not left without a remedy, because Mr. Z is traceable, his statement and the bank trail establish his liability, and recovery can be made from his property, including by attachment under Section 83 [Section 83(1) reaches proceedings under Chapter XIV and Chapter XV]. Mr. P's liability is that of an abettor - a penalty under Section 122(3)(a) - and the loss of his registration (item 2). Where, in another case, the real supplier cannot be traced or identified, the Department may be driven to the supplier on record; that is not this case.

5. Interest - under **Section 50(1)** at 18% per annum on the tax, month by month, from the day after the due date of the GSTR-3B of each month (20th of the following month) till payment. Illustratively, up to 30.11.2026, interest is Rs.15,88,846/- (Rs.7,94,423/- each under the CGST and HGST Acts) - see the working below.

6. Penalty on Mr. Z - under **Section 74A(5)(ii)**, a penalty equal to the tax due, Rs.64,98,000/- (Rs.32,49,000/- each under the CGST and HGST Acts). The tax was not paid by reason of suppression of facts to evade tax, and the facts are proved by the evidence and not by inference: (a) he knew he had to register and chose not to; (b) he hid his identity behind another's registration, obtained for a price of 1%; (c) he received the OTPs of the other registered person on WhatsApp for 222 invoices; (d) he received the full tax-inclusive price in his own account and deposited nothing; and (e) he generated the e-way bills from his own broadband connection. This is deliberate concealment, not an error of law, unlike Exercise-02. The concessions of **Section 74A(9)** (15% of the tax before the notice, 25% within 60 days of the notice, 50% within 60 days of the order, with tax and interest) are available. If Mr. Z pays under 74A(9), the proceedings in the same notice against the other noticee (Mr. P) under Section 122 are deemed concluded [Explanation 1 to Section 74A] - the notice should say so.

7. Specific penalties on Mr. Z - **Section 122(1)(xix)** (issue of invoices using the registration number of another registered person) and **Section 122(1)(xi)** (being liable to be registered, failure to obtain registration) are also attracted, the penalty being Rs.10,000/- or the tax evaded, whichever is higher. They are proposed in the alternative and without prejudice to the penalty under Section 74A(5)(ii), subject to Section 75(13) (one penalty for one act) and Section 126, and the adjudicating authority will impose the one which is higher and sufficient. Alternative route not adopted: since Mr. Z collected the tax-inclusive price from the recipients, **Section 76** (amount collected as tax and not paid - see Exercise-33) is also available against him. Section 74A is preferred as the main charge here because the evidence

is of non-payment by an unregistered supplier whose invoices stood in another's name, and the same amount must never be demanded under both sections. The reviewing officer may substitute Section 76 if he prefers the collection route.

8. Penalty on Mr. P - under **Section 122(3)(a)**: a penalty which may extend to Rs.25,000/- under each of the CGST Act and the HGST Act. The penalty is fixed at the ceiling in the draft, since he received a commission of Rs.3,61,000/- over five months, was aware that the registration was lent and took no step to stop it. The penalty is not under Section 122(1A): that sub-section covers only the transactions of clauses (i), (ii), (vii) and (ix) of Section 122(1), not clause (xix), and Mr. P did not conduct the transactions 'at his instance'.

9. The recipients (not noticees). The three dealers took credit of Rs.64,98,000/- on the Z invoices. Their ITC is at risk under **Section 16(2)(c)** (tax charged in respect of the supply has not been paid to the Government) and arguably under Section 16(2)(a) (the invoice was not issued by the registered person who supplied the goods). Section 16(2)(b) is not in doubt - the goods were received - and Rule 37A does not apply, since the supplier's GSTR-3B was filed for the period. Whether a recipient who dealt in good faith is protected is a question the Act does not answer in terms in Section 16(2)(c); it would have to be decided in separate notices to each recipient under Section 74A(1) with interest under Section 50(3), after considering whether the recipient took due care (e.g. why the money was paid to an account in a different name). The Department should therefore not combine them with this notice, which is concerned with the supplier and the lender. The recipients' statements are relied upon only as evidence.

10. Recovery - under Sections 78 and 79 against Mr. Z. Prosecution - Section 132 has been considered. Clause (b) (invoice without supply) is not attracted since goods were actually supplied; the offence is evasion of tax under clause (e), and the tax evaded (Rs.64,98,000/-, including State tax) is below the lowest monetary tier (Rs.2 crore) in the Master Chart (Template XI) for that clause, so prosecution is not proposed. Provisional attachment of the bank account of Mr. Z by DRC-22 dated 26.09.2025 (Section 83) ceased to have effect on 26.09.2026 after one year [Section 83(2)]; the notice will serve as the basis for any fresh order.

Illustrative working of tax, interest (18%, simple, up to 30.11.2026) and penalty on Mr. Z:

Month	Taxable value (Rs.)	Tax (Rs.) (CGST+HGST)	Days (from due date)	Interest (Rs.) (both Acts)	Penalty 74A(5)(ii) (Rs.)
April 2025	62,40,000	11,23,200	559	3,09,634	11,23,200
May 2025	71,10,000	12,79,800	528	3,33,238	12,79,800
June 2025	80,25,000	14,44,500	498	3,54,754	14,44,500
July 2025	77,50,000	13,95,000	467	3,21,270	13,95,000
August 2025	69,75,000	12,55,500	436	2,69,950	12,55,500
TOTAL	**3,61,00,000**	**64,98,000**		**15,88,846**	**64,98,000**

Basis: *Taxable value is taken as the value declared on the invoices (tax charged separately at 18%). Each month's tax is due with the GSTR-3B of the month, i.e. by the 20th of the next month (20.05.2025 for April 2025, …, 20.09.2025 for August 2025); interest runs from the next day. Days are counted to 30.11.2026.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, Mr. Z, of Ballabgarh, Faridabad, Haryana, also known as M/s XXX Traders (unregistered), and Mr. P, Proprietor of M/s AAA Enterprises, Faridabad, Haryana (GSTIN 06AAAPP0000A1ZP), are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Faridabad CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the goods of aggregate taxable value of Rs.3,61,00,000/- supplied by Mr. Z to the three dealers named in Annexure-A during April to August 2025 under 222 invoices bearing the registration number of M/s AAA Enterprises should not be held to be taxable supplies made by Mr. Z, a person liable to be registered under Section 22(1) of the CGST Act, 2017/HGST Act, 2017, without obtaining registration, and the said invoices to have been issued by him by using the registration number of another registered person;

(ii) an amount of Rs.32,49,000/- (Central tax) and Rs.32,49,000/- (Haryana State tax), total Rs.64,98,000/- (Rupees Sixty-Four Lakh Ninety-Eight Thousand only), being tax not paid on the said supplies, should not be demanded and recovered from Mr. Z under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the HGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/HGST Act, 2017 should not be charged and recovered from Mr. Z on the tax at (ii) above, month-wise from the day after the due date of the return of the respective month till the date of payment;

(iv) a penalty of Rs.32,49,000/- (Central tax) and Rs.32,49,000/- (Haryana State tax), total Rs.64,98,000/-, being equal to the tax due, should not be imposed on Mr. Z under Section 74A(5)(ii) of the CGST Act, 2017/HGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on Mr. Z under Section 122(1)(xix) and Section 122(1)(xi) of the CGST Act, 2017/HGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017;

(vi) a penalty of Rs.25,000/- under Section 122(3)(a) of the CGST Act, 2017 and Rs.25,000/- under the corresponding provision of the HGST Act, 2017 should not be imposed on Mr. P for aiding and abetting the said offence under Section 122(1)(xix) by permitting Mr. Z to use the registration number of M/s AAA Enterprises for a commission.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[•]/2026-FARIDABAD

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy Commissioner, CGST Division - [•], Faridabad CGST Commissionerate, Haryana

Date: [•].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Haryana Goods and Services Tax Act, 2017)

To,
1. Mr. Z, also known as M/s XXX Traders (unregistered),
YYYY, Ballabgarh, Faridabad, Haryana.
2. Mr. P, Proprietor, M/s AAA Enterprises (GSTIN 06AAAPP0000A1ZP),
Sector [•], Faridabad, Haryana.

(hereinafter referred to as 'Noticee-1' and 'Noticee-2' respectively, and jointly as 'the Noticees')

WHEREAS M/s AAA Enterprises, a proprietary concern of Noticee-2, is registered under the CGST Act, 2017/HGST Act, 2017 (GSTIN 06AAAPP0000A1ZP) as a trader in electrical goods with its own supplies of about Rs.2 lakh to Rs.2.5 lakh a month; and data analytics of the e-way bill portal and of the returns reported on 04.09.2025 (RUD-1) showed that from October 2024 a large number of e-way bills for insulated cables (HSN 8544) were generated under the said GSTIN from a place in Ballabgarh, not shown as a place of business of M/s AAA Enterprises, and that GSTR-1 of the GSTIN for April to August 2025 reported B2B supplies of Rs.3,61,00,000/- to three dealers in Haryana, whereas GSTR-3B of the GSTIN showed only the small own supplies of the registered person (RUD-2);

2. AND WHEREAS a search was conducted on 18.09.2025 under Section 67 of the CGST Act, 2017 at the godown at Plot [•], Industrial Area, Ballabgarh, rented in the name of Noticee-1, where stock of cables of about Rs.58 lakh was found; two mobile phones of Noticee-1 were copied (hash values recorded), and 27 purchase bill files of cables purchased in the name of 'Z Traders, Ballabgarh' without any GSTIN, a diary of 'bills made' and 'commission to P', and a cheque book and passbook of a current account of Noticee-1 were recovered under panchnama (RUD-3, RUD-4); no registration exists against the PAN of Noticee-1;

3. AND WHEREAS in his statement recorded on 22.09.2025 under Section 70 of the CGST Act, 2017 (RUD-5), Noticee-1 stated, inter alia, that:

- he has traded in cables from the Ballabgarh godown since 2022 and has never been registered; dealers insisted on a GST invoice, and in October 2024 Noticee-2 offered the use of the GSTIN of M/s AAA Enterprises for a commission of 1% of the invoice value;
- he buys the cables in his own name from Delhi, stores and sells them from his own godown, fixes the prices and receives the payments in his own bank account;
- his employee prepares the invoices in the name of M/s AAA Enterprises, generates the e-way bills and uploads the invoices for GSTR-1 using the login credentials of Noticee-2, the OTPs being sent by Noticee-2 on WhatsApp;
- the tax shown on the invoices was never deposited by him or, to his knowledge, by anyone; he did not register because he did not want to pay tax and 'wanted to compete on price'; and he paid the commission every month by transfer from his account;

4. AND WHEREAS in his statement recorded on 25.09.2025 under Section 70 (RUD-6), Noticee-2 admitted that he gave Noticee-1 the user ID, password and OTP of the GSTIN, that he forwarded the OTPs on request, that he received 1% of the invoice value every month, that he has never purchased, sold or stocked the cables covered by those invoices and has never visited the Ballabgarh godown, and that his accountant filed his GSTR-3B on the basis of his own sales only; his statement that Noticee-1 had

promised to deposit the tax in his cash ledger is not borne out, since the cash ledger shows no such deposit (RUD-2);

5. AND WHEREAS the e-way bill data obtained from the NIC (RUD-7) shows that all 222 e-way bills against the said invoices were generated from two static IP addresses, which, as per the reply dated 06.10.2025 of the internet service provider (RUD-8), belong to a broadband connection at the Ballabgarh godown in the name of Noticee-1, whereas the e-way bills of the own supplies of M/s AAA Enterprises were generated from a different IP address in Faridabad; the WhatsApp chats (RUD-9) contain over 300 messages in which Noticee-1 asks for the OTP for the bills and Noticee-2 sends it, and monthly messages about the commission; and the lorry receipts and FASTag records of the vehicles (RUD-10) show the Ballabgarh godown as the place of loading (the electronic records being accompanied by certificates under Section 145(2) of the CGST Act, 2017);

6. AND WHEREAS the bank statements of Noticee-1 (RUD-11) show that the three dealers named in Annexure-A paid the full invoice value, including tax, into the current account of Noticee-1, and that Noticee-1 transferred to the account of Noticee-2, in the first week of every following month, commission of 1% of the taxable value (Rs.3,61,000/- in all for April to August 2025); and the statements of the three dealers (RUD-12) show that the goods were received from the Ballabgarh godown, that they were introduced to Noticee-1 as 'the manager of AAA Enterprises' and that they paid to his account as told by him;

7. AND WHEREAS it appears from the above that the goods covered by the invoices were supplied by Noticee-1 and not by M/s AAA Enterprises, and that Noticee-1, who is a person liable to be registered under Section 22(1) of the CGST Act, 2017 (his supplies under the said invoices having been Rs.62,40,000/- in April 2025 alone, as against the threshold of Rs.40 lakh for suppliers of goods), failed to obtain registration, issued 222 invoices by using the registration number of another registered person in contravention of Section 31(1) read with Rule 46, did not file any return under Sections 37 and 39 and did not pay any tax on the supplies of taxable value Rs.3,61,00,000/-;

8. AND WHEREAS the tax payable at 18% (9% central tax and 9% Haryana State tax) on the said supplies is Rs.32,49,000/- each under the CGST Act and the HGST Act, total Rs.64,98,000/-, month-wise as in Annexure-A; and the non-payment appears to be by reason of suppression of facts with intent to evade tax, since Noticee-1 knew that he was required to register, concealed his identity behind the registration of another person for a price, received the OTPs on WhatsApp, and received the tax-inclusive price in his own account without depositing the tax, thereby attracting penalty under Section 74A(5)(ii) of the CGST Act, 2017/HGST Act, 2017;

9. AND WHEREAS it appears that Noticee-2, by knowingly permitting Noticee-1 to use his registration number, and the user ID, password and OTPs, for a commission, aided and abetted the offence under Section 122(1)(xix) of the CGST Act, 2017, and is liable to penalty under Section 122(3)(a); no tax is proposed to be demanded from Noticee-2 in this notice, which is without prejudice to the proceedings for cancellation of the registration of M/s AAA Enterprises in FORM GST REG-17 and to the proceedings that may be taken against the recipients of the invoices;

10. AND WHEREAS it thus appears that Noticee-1 has contravened Sections 9(1), 22(1) read with 25(1), 31(1) read with Rule 46, 35(1) and 37(1) and 39(1) of the CGST Act, 2017 and the corresponding provisions of the HGST Act, 2017, and is liable to demand under Section 74A, interest under Section 50(1) and penalty under Section 74A(5)(ii) and, in the alternative, under Sections 122(1)(xix) and 122(1)(xi); and Noticee-2 is liable to penalty under Section 122(3)(a);

NOW, THEREFORE

Noticee-1 and Noticee-2 are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Faridabad CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the goods of aggregate taxable value of Rs.3,61,00,000/- supplied by Noticee-1 to the three dealers named in Annexure-A during April to August 2025 under 222 invoices bearing the registration number of M/s AAA Enterprises should not be held to be taxable supplies made by Noticee-1, a person liable to be registered under Section 22(1) of the CGST Act, 2017/HGST Act,

2017, without obtaining registration, and the said invoices to have been issued by him by using the registration number of another registered person;

(ii) an amount of Rs.32,49,000/- (Central tax) and Rs.32,49,000/- (Haryana State tax), total Rs.64,98,000/- (Rupees Sixty-Four Lakh Ninety-Eight Thousand only), being tax not paid on the said supplies as detailed in Annexure-A to this notice, should not be demanded and recovered from Noticee-1 under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the HGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/HGST Act, 2017 should not be charged and recovered from Noticee-1 on the tax at (ii) above, month-wise from the day after the due date of the return of the respective month till the date of payment;

(iv) a penalty of Rs.32,49,000/- (Central tax) and Rs.32,49,000/- (Haryana State tax), total Rs.64,98,000/-, being equal to the tax due, should not be imposed on Noticee-1 under Section 74A(5)(ii) of the CGST Act, 2017/HGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on Noticee-1 under Section 122(1)(xix) and Section 122(1)(xi) of the CGST Act, 2017/HGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017;

(vi) a penalty of Rs.25,000/- under Section 122(3)(a) of the CGST Act, 2017 and Rs.25,000/- under the corresponding provision of the HGST Act, 2017 should not be imposed on Noticee-2.

11. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and each Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available to Noticee-1 under Section 74A(9) of the CGST Act, 2017/HGST Act, 2017, whereby, on payment of the tax, interest and the stated percentage of penalty (15% before the notice; 25% within sixty days of the notice; 50% within sixty days of the order), all proceedings in respect of the said notice are deemed to be concluded; where Noticee-1 so pays, the proceedings against Noticee-2 for the penalty under Section 122 in this notice are also deemed to be concluded, in terms of Explanation 1 to Section 74A;
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017/HGST Act, 2017, or any other law for the time being in force, including the proceedings for cancellation of the registration of M/s AAA Enterprises.

List of Relied Upon Documents (RUDs):

RUD-1: Data analytics report dated 04.09.2025 on e-way bills and returns of GSTIN 06AAAPP0000A1ZP;

RUD-2: GSTR-1, GSTR-3B, electronic cash ledger and electronic credit ledger of the GSTIN for April to August 2025 (portal print-outs, with certificate under Section 145(2));

RUD-3: Panchnama dated 18.09.2025 of the search at the Ballabgarh godown, with inventory of stock and seized documents;

RUD-4: 27 purchase bill files in the name of 'Z Traders, Ballabgarh', the diary of 'bills made' and 'commission to P', and the cheque book and passbook of the current account of Noticee-1;

RUD-5: Statement of Noticee-1 recorded on 22.09.2025 under Section 70;

RUD-6: Statement of Noticee-2 recorded on 25.09.2025 under Section 70;

RUD-7: E-way bill data of the 222 e-way bills with IP-address log, obtained from the NIC (with certificate under Section 145(2));

RUD-8: Reply dated 06.10.2025 of the internet service provider to the summons under Section 70,

identifying the broadband connection;

RUD-9: WhatsApp chats copied from the mobile phones of Noticee-1 on 18.09.2025 (with hash values and certificate under Section 145(2));

RUD-10: Lorry receipts and FASTag records of the vehicles named in the e-way bills;

RUD-11: Bank statements of the current account of Noticee-1 and of the account of Noticee-2 for April to September 2025;

RUD-12: Statements of the proprietors of M/s BBB Electricals, M/s CCC Traders and M/s DDD Agencies recorded on 08.10.2025, 09.10.2025 and 10.10.2025 under Section 70;

Annexure-A: Month-wise statement of invoices, recipient-wise statement and calculation of tax and interest [as per the tables in the Situation and the working in Part B].

(_____)
Deputy Commissioner, CGST
Division - [•], Faridabad CGST Commissionerate

Copy to: The Joint/Additional Commissioner, CGST, Faridabad Commissionerate, for information; and the Superintendent, CGST Range - [•], for initiating the proceedings under Section 29 and Section 25(8) separately.

Drafting note (not part of the notice):

- *The addressees, jurisdictional range/division, GSTIN, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. 'Mr. Z', 'Mr. P', M/s AAA Enterprises and the three dealers are fictional.*
- ***Teaching point - who is the real supplier?** The first question in every 'borrowed GSTIN' case is who actually made the supply (Section 7, Section 2(105)); the name and registration number on the invoice are not decisive. The charged persons follow from the answer: the real supplier (Mr. Z) bears the tax, interest and the penalty under Section 74A(5)(ii); the lender (Mr. P) bears the abettor's penalty under Section 122(3)(a) and the loss of his registration; the recipients are dealt with separately. Compare Exercise-04 (invoices of a dummy proprietor, where the registered person himself is a front and the real controller is brought in), Exercise-30 (registration obtained on forged premises documents) and Exercise-05 (circular trading, where no goods move): here the registration is genuine, the holder is a real person who consented for a price, and the goods are real.*
- ***Evidence.** The use of the GSTIN is proved not by the invoices but by the e-way bill login IP addresses tied to the broadband connection at Mr. Z's godown by the ISP's reply, the WhatsApp OTP messages, the bank trail (money in Mr. Z's account; 1% commission to Mr. P), the purchase bills in Mr. Z's name and the absence of any purchase or stock with Mr. P. Electronic records must be accompanied by the certificate under Section 145(2) and hash values; the extraction should be done in the presence of the person and recorded in the panchnama.*
- ***Route choice.** The tax is demanded from Mr. Z under Section 74A (fraud case: Section 74A(5)(ii) and 74A(9)). Section 76 (tax collected and not paid) is also available because Mr. Z collected tax-inclusive prices - the same tax cannot be demanded under both (see Exercise-33). No tax is demanded from Mr. P (reasons in Part B, item 4); some officers demand the tax from the registered person as an alternative where the real supplier cannot be found, and the officer should decide this on the facts. Section 122(1A) is not available against the lender (clause (xix) is outside it); Section 122(3)(a) is the right provision. The recipients should be proceeded against separately; this exercise does not decide whether any of them is protected as a bona fide purchaser, and no case law is cited for that reason.*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.32,49,000/-, so the notice is issued by the Deputy/Assistant Commissioner.*

- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 66

Payment of tax on reverse charge through the electronic credit ledger instead of cash - Section 9(3), Section 49(3)/(4), Rule 85(4) and demand under Section 74A

Exercise 66: Payment of tax on reverse charge through the electronic credit ledger instead of cash - Section 9(3), Section 49(3)/(4), Rule 85(4) and demand under Section 74A

Situation in Brief:

1. M/s XXX Auto Components Pvt. Ltd., Plot [•], GIDC Industrial Estate, Shapar-Veraval, Rajkot, Gujarat (GSTIN 24AAAXX0000A1ZQ), is a manufacturer of auto components with an annual turnover of about Rs.62 crore, registered under the CGST Act, 2017/GGST Act, 2017. During FY 2025-26 it received (a) legal services (advice and representation in the courts and before the tax authorities) from a firm of advocates at Rajkot, and (b) security services (security guards at the plant and the godown) from a proprietary security agency of Mr. [•] at Rajkot. Both are taxable at 18% (9% central tax + 9% Gujarat State tax) and are on the reverse charge basis under Section 9(3) of the CGST Act, 2017 read with Notification No. 13/2017-Central Tax (Rate) (entry 2: legal services by an advocate or a firm of advocates to a business entity; entry 14: security services by a person other than a body corporate to a registered person). Neither supplier charged tax in the invoices, and the Company issued self-invoices under Section 31(3)(f).

2. In the course of scrutiny of the returns under Section 61, the Superintendent, CGST Range - [•], Rajkot, found that in the GSTR-3B for June to September 2025 the Company had shown the tax payable on reverse charge in Table 3.1(d) (inward supplies liable to reverse charge) and had also claimed the same amount as input tax credit in Table 4(A)(3), but in Table 6.1 (payment of tax) the reverse charge liability of these four months had been shown as paid through the electronic credit ledger (central tax and State tax credit in equal parts), with nil payment in cash. For April and May 2025 the same liability had been paid in cash. A notice in FORM GST ASMT-10 was issued on 14.07.2026. The Company replied in FORM GST ASMT-11 on 11.08.2026 that the credit was available in the ledger, the credit claimed in Table 4(A)(3) and the liability paid cancel out, no loss of revenue arises and the matter is 'revenue neutral'; the reply was not accepted since reverse charge tax can be paid only in cash, and no payment was made.

3. A statement of Mr. Z, Manager (Finance and Accounts) of the Company, was recorded on 02.09.2026 under Section 70 of the CGST Act, 2017, wherein he stated that the accounts department changed its accountant in June 2025; that the new accountant fed the 'auto set-off' option in the return software, as a result of which the reverse charge liability was discharged from the credit ledger in the same way as the regular output tax; that the tax and the values were correctly reported in Table 3.1(d); that nobody noticed the error till the half-yearly limited review of the statutory auditor in October 2025, since when the reverse charge tax is again being paid in cash every month; and that the Company's credit ledger always had a sufficient balance and the cash ledger was maintained for the minimum amount. The Company did not apply for any re-credit or refund and did not make any payment in cash for the four months.

4. The month-wise position of the reverse charge liability for April to September 2025 as per GSTR-3B, which has been verified with the self-invoices, the ledgers of the suppliers and the electronic liability register, is as follows:

Month	Legal services (Rs.)	Security services (Rs.)	Tax at 18% (Rs.)	Paid in cash (Rs.)	Paid through ITC (Rs.)
April 2025	4,20,000	2,40,000	1,18,800	1,18,800	Nil
May 2025	3,60,000	2,40,000	1,08,000	1,08,000	Nil
June 2025	8,50,000	2,40,000	1,96,200	Nil	1,96,200
July 2025	5,10,000	2,40,000	1,35,000	Nil	1,35,000
August 2025	6,30,000	2,40,000	1,56,600	Nil	1,56,600
September 2025	4,70,000	2,40,000	1,27,800	Nil	1,27,800
TOTAL	**32,40,000**	**14,40,000**	**8,42,400**	**2,26,800**	**6,15,600**

5. The ITC of Rs.6,15,600/- taken in Table 4(A)(3) for the four months relates to services used for the

business of manufacture of taxable goods; none of it falls under Section 17(5), and no other ineligibility is alleged. The Company has since October 2025 paid every month's reverse charge liability in cash and claimed the credit in Table 4(A)(3). The returns for the four months were filed within the due dates (20th of the following month).

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Auto Components Pvt. Ltd. (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against the Company (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to the Company, calling upon the Company to show cause as to why action should not be taken against it, while listing the proposed action to be taken.

(iv) Also prepare the draft Show Cause Notice for issuance to the Company.

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SUGGESTED SOLUTION

(Scrutiny of Returns under Section 61, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Auto Components Pvt. Ltd., Rajkot CGST Commissionerate)

A. CONTRAVENTION

The Company is the person liable to pay the tax on the legal and security services, as if it were the supplier [Section 9(3)]. The tax was correctly worked out and reported, but it was paid through the wrong ledger. The following provisions stand contravened (in each case read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017 [GGST Act] and the Rules made under the two Acts):

1. **Section 49(4) of the CGST Act, 2017** - the amount in the electronic credit ledger may be used only 'for making any payment towards output tax'. 'Output tax' is defined in **Section 2(82)** as the tax chargeable on the taxable supplies made by the taxable person or his agent, and it expressly **excludes the tax payable by him on reverse charge basis**. The reverse charge tax is therefore not 'output tax' and cannot be paid from the credit ledger. **Section 49(3)** permits the cash ledger to be used for 'any payment towards tax, interest, penalty, fees or any other amount', and so the reverse charge tax must be paid from the cash ledger.
2. **Rule 85(4) of the CGST Rules, 2017** - the amount of tax payable under reverse charge (and tax deducted under Section 51, tax collected under Section 52 and tax under Section 10) is to be paid by debiting the electronic cash ledger (Rule 87) and not the credit ledger; in terms of the Master Chart (Template IV, row 10) the reverse charge liability 'must be discharged in cash'. Rule 85(3), which lets the liability in a return be paid from either ledger, is expressly subject to this sub-rule.
3. **Section 9(3) read with Notification No. 13/2017-Central Tax (Rate)** and **Section 39(7)** (the tax payable as per the return is to be paid by the due date of the return) - the reverse charge tax of Rs.6,15,600/- for June to September 2025 was not paid in cash by the due dates. As to the Company's returns, the values and the tax were correctly disclosed in Table 3.1(d); there is no mis-reporting and no failure under Sections 37 or 39(1), but only a wrong mode of payment.

Note: *This case is different from Exercises 20-22 (non-payment of reverse charge). There the tax was neither reported nor paid; here the tax was reported in full, claimed as credit and 'paid' through the credit ledger. Section 16(2)(c) is not the issue: the ITC claimed under Table 4(A)(3) is not alleged to be ineligible in itself. Rule 86A (blocking of credit) is not attracted because the credit was validly availed and no fraud is alleged. Sections 122(1)(vii) and (ix) have no application.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the Company to the following action under the CGST Act, 2017 (read with the corresponding provisions of the GGST Act, 2017):

1. Route - scrutiny of the returns under Section 61 (FORM GST ASMT-10 and ASMT-11) is complete, and the reply is not accepted. The proper officer proceeds to determine the tax under **Section 74A(1)** (FY 2025-26: Section 74A(12)). No registration action is called for.
2. What is the demand? The tax of Rs.6,15,600/- (central tax Rs.3,07,800/- and Gujarat State tax Rs.3,07,800/-) for June to September 2025 is to be paid in cash. The liability stands discharged only to the extent it is paid in the manner allowed by law, and the payment through the credit ledger is not a payment under Rule 85(4); the unpaid tax is therefore demanded as 'tax not paid' under Section 74A(1). The demand is for the cash shortfall only. The tax of Rs.2,26,800/- paid in cash for April and May 2025 is not in dispute and nothing is demanded for those months. The notice can be issued up to 30.06.2030 [Section 74A(2): 42 months from the due date of the annual return for FY 2025-26, i.e. 31.12.2026], and the order has to be passed within twelve months of the notice, extendable by six months [Section 74A(7)].
3. Interest - under **Section 50(1)** at 18% per annum, on the cash shortfall only, from the day after the due date of the GSTR-3B of each of the four months (21.07.2025, 21.08.2025, 21.09.2025 and 21.10.2025) till the date of payment in cash. Illustratively, up to 30.11.2026, interest is Rs.1,38,534/- (Rs.69,267/-

each under the CGST and GGST Acts) - see the working below. The following points were considered: (a) interest is not payable for April and May 2025, since the liability was paid in cash on time; (b) the rate is 18% under Section 50(1), and not 24% under Section 50(3) and Rule 88B, which apply to input tax credit wrongly availed and utilised - the credit here was correctly availed and was only used to pay the wrong head; (c) the Company's argument that the credit ledger had a balance and the credit claimed in Table 4(A)(3) cancels the debit (so that the Revenue has lost nothing) is not accepted for interest: interest is compensation for the Government's use of money not paid in the manner prescribed, and the credit remained a balance in the Company's account against the Government throughout; but it supports the finding that the default is not fraudulent (item 5).

4. What happens to the credit? (restoration of credit) The Company took the credit on the reverse charge tax in Table 4(A)(3) in the same months. The credit on the self-invoices under Section 31(3)(f) is allowed subject to payment of tax [Rule 36(1)(b)]. As the tax is paid in cash now, the credit is allowable, and no reversal of the credit already claimed is proposed - a demand of the same amount twice (once as tax and once as ineligible credit) would be wrong. The credit ledger, however, was debited by Rs.6,15,600/- when the tax was paid in a wrong mode. When the cash is paid, the Company will have paid the same tax twice (the debit and the cash); the debit is to be restored. The Act and the Rules do not provide an express procedure for re-crediting an amount debited from the credit ledger in contravention of Rule 85(4) (UNVERIFIED - see Drafting notes); the notice therefore records that the demand is of cash only, that the credit availed is not disputed, and that the question of restoration of the amount debited will be taken up in the order on proof of payment. The net effect is revenue-neutral in amount (the same sum comes back as credit), but not in law: the cash payment and the interest are the true costs of the error.

5. Penalty - under **Section 74A(5)(i)**: 10% of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.30,780/- each under the CGST Act and the GGST Act (total Rs.61,560/-). Section 74A(5)(ii) is not proposed, since the amount is not unpaid by reason of fraud or wilful misstatement or suppression of facts to evade tax: the values and the tax were fully and correctly disclosed in Table 3.1(d) of each return, the credit was claimed openly in Table 4(A)(3), the error was a system set-off, the Company corrected it by itself from October 2025 and, even for the default months, there was no gain to the Company (the net ledger effect being nil). 'Suppression' means non-declaration of facts required to be declared in the return [Explanation 2 to Section 74A]; there was none. A bona fide mistake does not take the case outside Section 74A(5)(i) - the section has no 'reasonable cause' exception and Section 126 does not apply to a penalty expressed as a fixed percentage [Section 126(6)] - but the Company can avoid the penalty by paying the tax and interest within sixty days of the notice [Section 74A(8)(ii)]. Section 74A(11) is a caution: where self-assessed tax shown in a return is not paid within thirty days of its due date, the penalty under 74A(5)(i) is payable even on payment under 74A(8). Whether the cash component of tax discharged from the wrong ledger is 'self-assessed tax not paid' for this purpose is not settled (UNVERIFIED), and the notice does not therefore promise nil penalty.

6. No penalty on the officers of the Company - the default is non-fraud and no person is shown to have acted for personal gain; no penalty under Section 122 is proposed on Mr. Z (the Finance Manager), and none under Section 122 is separately proposed on the Company, in view of Section 75(13) (UNVERIFIED as to its extension to Section 74A - Drafting notes).

7. Alternative routes not adopted - (a) recovery under Section 75(12) read with Section 79, directly, of self-assessed tax shown in the return which remains unpaid: not adopted, since the Company says that the liability was discharged (by the credit ledger) and a notice with a hearing gives a reasoned order and avoids dispute on the point; (b) Rule 86A: no blocking of credit; (c) demand of the ITC claimed in Table 4(A)(3) under Section 16: not adopted (item 4).

8. Recovery and prosecution - under Sections 78 and 79 if the amount is not paid. There is no offence under Section 132, since there was no intent to evade tax. Authority - central tax Rs.3,07,800/-, within the limit of the Superintendent (Circular No. 31/05/2018-GST).

Illustrative working of the tax demanded (cash shortfall), interest (18%, simple, up to 30.11.2026) and penalty:

Month	Tax paid through ITC (Rs.)	Due date of GSTR-3B	Days	Interest (Rs.) (both Acts)
June 2025	1,96,200	20.07.2025	498	48,184
July 2025	1,35,000	20.08.2025	467	31,090
August 2025	1,56,600	20.09.2025	436	33,672
September 2025	1,27,800	20.10.2025	406	25,588
TOTAL	**6,15,600**			**1,38,534**

Basis: *Tax demanded: Rs.6,15,600/- (CGST Rs.3,07,800/- + GGST Rs.3,07,800/-). Penalty under Section 74A(5)(i): 10% of Rs.3,07,800/- = Rs.30,780/- under each Act, which exceeds Rs.10,000/-; total Rs.61,560/-. Interest is computed for each Act on half of the tax and added; days are counted from the due date to 30.11.2026.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Auto Components Pvt. Ltd., Plot [•], GIDC Industrial Estate, Shapar-Veraval, Rajkot, Gujarat (GSTIN 24AAAXX0000A1ZQ), is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the tax of Rs.6,15,600/- payable on reverse charge basis on legal services and security services received during June 2025 to September 2025, which was discharged by debiting the electronic credit ledger, should not be held not to have been paid in accordance with Section 49(3) and Section 49(4) of the CGST Act, 2017 read with Rule 85(4) of the CGST Rules, 2017 and the corresponding provisions of the GGST Act, 2017;

(ii) an amount of Rs.3,07,800/- (Central tax) and Rs.3,07,800/- (Gujarat State tax), total Rs.6,15,600/- (Rupees Six Lakh Fifteen Thousand Six Hundred only), being the tax payable on reverse charge basis for the said months, as detailed in Annexure-A, should not be demanded and recovered from it in cash under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered on the tax at (ii) above, month-wise from the day after the due date of the return of the respective month till the date of payment in cash;

(iv) a penalty of Rs.30,780/- (Central tax) and Rs.30,780/- (Gujarat State tax), total Rs.61,560/-, being 10% of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-RAJKOT

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Rajkot CGST Commissionerate, Gujarat

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Gujarat Goods and Services Tax Act, 2017)

To,
M/s XXX Auto Components Pvt. Ltd. (GSTIN 24AAAXX0000A1ZQ),
Plot [●], GIDC Industrial Estate, Shapar-Veraval, Rajkot, Gujarat.

(hereinafter referred to as 'the Noticee' or 'the Company')

WHEREAS the Noticee, a manufacturer of auto components registered under the CGST Act, 2017/GGST Act, 2017, received during FY 2025-26 legal services from a firm of advocates and security services from a proprietary security agency, both at Rajkot, the tax on which, at 18% (9% central tax and 9% Gujarat State tax), is payable by the Noticee on reverse charge basis under Section 9(3) of the CGST Act, 2017 read with entries 2 and 14 of Notification No. 13/2017-Central Tax (Rate) (RUD-1);

2. AND WHEREAS in the course of scrutiny of the returns under Section 61, it was noticed that in the GSTR-3B of the Noticee for June, July, August and September 2025 (RUD-2) the Noticee had disclosed the reverse charge tax in Table 3.1(d) and claimed the same amount as input tax credit in Table 4(A)(3), but in Table 6.1 had shown the liability as paid through the electronic credit ledger, with nil payment in cash, as against the payment in cash for April and May 2025; the same is borne out by the electronic liability register and the electronic credit ledger (RUD-3);

3. AND WHEREAS a notice in FORM GST ASMT-10 dated 14.07.2026 was issued to the Noticee (RUD-4), to which the Noticee replied in FORM GST ASMT-11 on 11.08.2026 (RUD-5) that the credit was available in the ledger and that the matter was revenue neutral; the reply was not found acceptable and the Noticee made no payment in cash;

4. AND WHEREAS in his statement recorded on 02.09.2026 under Section 70 of the CGST Act, 2017 (RUD-6), Mr. Z, Manager (Finance and Accounts) of the Noticee, stated that a new accountant joined in June 2025 and used the 'auto set-off' option in the return software, due to which the reverse charge liability was set off from the credit ledger; that the values and tax were correctly reported in Table 3.1(d); that the error was noticed in October 2025 in the half-yearly limited review of the statutory auditor, since when the reverse charge tax has been paid in cash; and that no payment was made in cash for the four months;

5. AND WHEREAS the reverse charge tax for the six months from April to September 2025 is Rs.8,42,400/-, of which Rs.2,26,800/- for April and May 2025 was paid in cash, and Rs.6,15,600/- (central tax Rs.3,07,800/- and Gujarat State tax Rs.3,07,800/-) for June to September 2025 was paid by debiting the electronic credit ledger, as per Annexure-A (RUD-7);

6. AND WHEREAS under Section 49(4) of the CGST Act, 2017 the amount in the electronic credit ledger can be used only for payment of output tax; 'output tax' as defined in Section 2(82) does not include the tax payable on reverse charge basis; Section 49(3) permits payment of tax from the electronic cash ledger; and Rule 85(4) of the CGST Rules, 2017 requires the tax payable on reverse charge to be paid by debiting the electronic cash ledger; it thus appears that the reverse charge tax of Rs.6,15,600/- was not paid in accordance with law and remains payable in cash;

7. AND WHEREAS the Noticee has not been shown to have availed any ineligible credit; the credit claimed in Table 4(A)(3) is not disputed in this notice, and no reversal of it is proposed; the amount of Rs.6,15,600/- debited from the electronic credit ledger will be examined for restoration on proof of

payment of the tax in cash, in the order to be passed;

8. AND WHEREAS the values and the tax were fully disclosed in the returns and the Noticee corrected the practice by itself from October 2025; the non-payment in cash therefore appears to be for a reason other than fraud or wilful misstatement or suppression of facts, and penalty under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 appears to be attracted;

9. AND WHEREAS it thus appears that the Noticee has contravened Sections 49(3) and 49(4) and Section 39(7) of the CGST Act, 2017 read with Rule 85(4) of the CGST Rules, 2017 and the corresponding provisions of the GGST Act, 2017, and is liable to demand of the tax in cash under Section 74A(1), interest under Section 50(1) and penalty under Section 74A(5)(i);

NOW, THEREFORE

M/s XXX Auto Components Pvt. Ltd. is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Rajkot CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the tax of Rs.6,15,600/- payable on reverse charge basis on legal services and security services received during June 2025 to September 2025, which was discharged by debiting the electronic credit ledger, should not be held not to have been paid in accordance with Section 49(3) and Section 49(4) of the CGST Act, 2017 read with Rule 85(4) of the CGST Rules, 2017 and the corresponding provisions of the GGST Act, 2017;

(ii) an amount of Rs.3,07,800/- (Central tax) and Rs.3,07,800/- (Gujarat State tax), total Rs.6,15,600/- (Rupees Six Lakh Fifteen Thousand Six Hundred only), being the tax payable on reverse charge basis for the said months, as detailed in Annexure-A to this notice, should not be demanded and recovered from it in cash under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/GGST Act, 2017 should not be charged and recovered on the tax at (ii) above, month-wise from the day after the due date of the return of the respective month till the date of payment in cash;

(iv) a penalty of Rs.30,780/- (Central tax) and Rs.30,780/- (Gujarat State tax), total Rs.61,560/-, being 10% of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to Section 74A(8) of the CGST Act, 2017/GGST Act, 2017, under which, on payment of the tax with interest under Section 50 before the notice (and no notice is then issued) or within sixty (60) days of this notice, no penalty is payable and all proceedings in respect of this notice are deemed to be concluded, subject to Section 74A(11); the tax is to be paid by debiting the electronic cash ledger (Rule 87) and not the credit ledger, and the payment may be made through FORM GST DRC-03;
- the credit claimed by the Noticee in Table 4(A)(3) of the returns is not disputed in this notice; on proof of the payment in cash the question of restoration of the amount debited from the electronic credit ledger will be considered in the order;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/GGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Contracts/fee notes of the firm of advocates and the security agency, and the self-invoices issued by the Noticee under Section 31(3)(f), for April to September 2025;

RUD-2: GSTR-3B of the Noticee for April to September 2025 (portal print-outs);

RUD-3: Electronic liability register and electronic credit ledger and cash ledger of the Noticee for April to September 2025;

RUD-4: Notice in FORM GST ASMT-10 dated 14.07.2026;

RUD-5: Reply of the Noticee in FORM GST ASMT-11 dated 11.08.2026;

RUD-6: Statement of Mr. Z, Manager (Finance and Accounts) recorded on 02.09.2026 under Section 70;

RUD-7: Month-wise reconciliation of the reverse charge liability of the Noticee for April to September 2025;

Annexure-A: Month-wise statement of reverse charge tax, payment through cash and credit ledger, and calculation of interest [as per the table in the Situation and the working in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Rajkot CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Rajkot, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, GSTIN, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. 'M/s XXX Auto Components Pvt. Ltd.' and Mr. Z are fictional.*
- ***Teaching point - cash or credit for reverse charge.*** *The reverse charge tax is not 'output tax' [Section 2(82)], the credit ledger can be used only for output tax [Section 49(4)], and Rule 85(4) requires cash. So the unit of default is the amount paid through the wrong ledger (the cash shortfall), not the whole reverse charge liability and not the credit. Compare Exercises 20-22, where the reverse charge tax was not paid at all (and not reported): here the tax is reported and paid, through the wrong ledger, so only the cash shortfall is demanded, interest runs only on that shortfall (and for the months concerned) at 18%, there is no demand of the credit and the penalty is the non-fraud penalty under Section 74A(5)(i). The credit debited has to be restored on payment (UNVERIFIED mechanism - see below).*
- ***Fraud or non-fraud?*** *Section 74A(5)(ii) requires fraud or wilful misstatement or suppression of facts to evade tax. The full disclosure in Table 3.1(d), the open claim in Table 4(A)(3), the self-correction from October 2025 and the nil net ledger effect lead to Section 74A(5)(i). Contrast the cases where the recipient hid the reverse charge supply itself. A bona fide mistake does not by itself exclude the penalty under 74A(5)(i); the way out is Section 74A(8)(ii), subject to Section 74A(11).*
- ***Points to be checked before issue.*** *(a) On the portal, the reverse charge row of Table 6.1 is understood to accept payment in cash only (several secondary sources say so); the facts of this exercise follow the Master Chart and the return copies assumed to be in the file - check how the credit ledger came to be debited in the actual case (portal set-off, DRC-03 or otherwise). (b) The restoration of the credit debited has no express procedure in the Rules that could be verified; a re-credit by the adjudicating authority/portal facility or an application by the Company should be settled with the jurisdictional Commissionerate. (c) Section 16(4): the credit on invoices pertaining to FY 2025-26 can be taken up to 30 November 2026; the credit here was taken in time and is not disputed, but if the Department were to hold that the credit is available only after the cash payment, a payment after 30.11.2026 would expose the Company to the time bar - the Company should be advised to pay before that date. (d) Section 75(13) is applied as in Exercises 52 and 33; whether it now expressly names Section 74A could not be confirmed from the sources available.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner:*

above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.3,07,800/-, within the Superintendent's limit.

- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 67

Discharge of output tax through the electronic credit ledger beyond 99% where monthly taxable supplies exceed Rs.50 lakh - Rule 86B, Section 49(4) and demand under Section 74A

Exercise 67: Discharge of output tax through the electronic credit ledger beyond 99% where monthly taxable supplies exceed Rs.50 lakh - Rule 86B, Section 49(4) and demand under Section 74A

Situation in Brief:

1. M/s XXX Distributors, a partnership firm with Mr. Z and Mr. P as its two partners, having its place of business at Plot [•], Industrial Area, Kukatpally, Hyderabad, Telangana (GSTIN 36AAAFX0000A1Z8), is a wholesale distributor of a range of goods, all supplied as taxable goods at 18% (9% central tax + 9% Telangana State tax), and is registered under the CGST Act, 2017/TGST Act, 2017. Its supplies are all intra-State, and it has no exempt or zero-rated supplies. Its monthly taxable turnover during FY 2025-26 was between Rs.3 crore and Rs.4 crore, except in January 2026 when the godown was closed for 24 days for shifting to a new warehouse.

2. The Superintendent, CGST Range - [•], Hyderabad CGST Commissionerate, in the scrutiny of the returns for FY 2025-26 under Section 61, found that in the GSTR-3B for most of the months the output tax was shown as paid entirely through the electronic credit ledger, with nil payment in cash. A notice in FORM GST ASMT-10 was issued on 22.06.2026 pointing out the violation of Rule 86B of the CGST Rules, 2017. The firm replied on 20.07.2026 that (a) the partners and the firm had paid more than Rs.1 lakh as income tax and the restriction in Rule 86B does not apply to it, (b) the credit was lawfully available and the Revenue lost nothing, and (c) the default, if any, is bona fide. It added that on 15.01.2026 it had applied to the Principal Commissioner for relaxation of the restriction under the second proviso to Rule 86B, but no order has been received. The reply was not accepted, and the firm paid no amount.

3. The statement of Mr. Z, Partner, was recorded on 12.08.2026 under Section 70 of the CGST Act, 2017, wherein he stated that the firm does not export or supply to any Government department or PSU, has never claimed a refund under Section 54 (since it has no zero-rated supplies and no inverted duty structure), and that the firm pays its output tax from the credit ledger and pays cash only when the credit is short, as it did in April 2025 (Rs.1,20,000/-). He produced the income-tax particulars of the firm and the two partners, which show the income tax paid (excluding TDS credit and refund adjustment) as follows:

Person	FY 2022-23 (Rs.)	FY 2023-24 (Rs.)	FY 2024-25 (Rs.)
M/s XXX Distributors (firm)	84,000	1,40,000	62,000
Mr. Z (Partner)	55,000	1,12,000	40,000
Mr. P (Partner)	31,000	78,000	90,000

4. Mr. Z stated that the firm paid Rs.1,40,000/- as income tax in FY 2023-24, which is more than Rs.1 lakh, that the tax paid by the firm and the partners may be added together (the aggregate for FY 2024-25 being Rs.1,92,000/-) and that, in any case, the proviso says only 'paid more than one lakh rupees'. The refund register of the firm for FY 2024-25 is nil, and the firm is neither a Government department nor a PSU, local authority or statutory body. The month-wise details of the supplies and the discharge of the output tax as per GSTR-3B are as follows (all returns were filed by the 20th of the following month):

Month	Taxable value (Rs.)	Output tax (Rs.)	Paid through ITC (Rs.)	Paid in cash (Rs.)
April 2025	3,10,00,000	55,80,000	54,60,000	1,20,000
May 2025	3,40,00,000	61,20,000	61,20,000	0
June 2025	3,25,00,000	58,50,000	58,50,000	0
July 2025	3,60,00,000	64,80,000	64,80,000	0
August 2025	3,52,00,000	63,36,000	63,36,000	0
September 2025	3,38,00,000	60,84,000	60,84,000	0
October 2025	3,95,00,000	71,10,000	71,10,000	0

Month	Taxable value (Rs.)	Output tax (Rs.)	Paid through ITC (Rs.)	Paid in cash (Rs.)
November 2025	3,71,00,000	66,78,000	66,78,000	0
December 2025	3,66,00,000	65,88,000	65,88,000	0
January 2026	47,90,000	8,62,200	8,62,200	0
February 2026	3,70,00,000	66,60,000	66,60,000	0
March 2026	4,12,00,000	74,16,000	74,16,000	0
TOTAL	**39,86,90,000**	**7,17,64,200**	**7,16,44,200**	**1,20,000**

5. The credit ledger of the firm carried a balance throughout the year; the credit was validly availed and its eligibility is not in dispute. No order has been passed by the Principal Commissioner under the second proviso to Rule 86B. The firm has not paid the cash for the months in question, even after the scrutiny notice.

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Distributors (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Distributors (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Distributors, calling upon the firm and its partners to show cause as to why action should not be taken against it, while listing the proposed action to be taken.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX Distributors.

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SUGGESTED SOLUTION

(Scrutiny of Returns under Section 61, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Distributors, Hyderabad CGST Commissionerate)

A. CONTRAVENTION

The case is about the way in which the output tax is paid, not about the amount of tax or the eligibility of the credit. Rule 86B of the CGST Rules, 2017 restricts the use of the electronic credit ledger by a registered person whose taxable supplies (other than exempt supplies and zero-rated supplies) in a month exceed Rs.50 lakh: he 'shall not use the amount available in the electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent of such tax liability' - that is, at least 1% of the output tax must be paid in cash. The restriction does not apply where any of the following exceptions of the proviso is satisfied: (a) the registered person (or, as the case may be, its proprietor, karta, managing director, any of its two partners, whole-time directors, members of the managing committee or board of trustees) has paid more than Rs.1 lakh as income tax in each of the last two financial years for which the time limit to file the return of income under Section 139(1) of the Income-tax Act, 1961 has expired; (b)/(c) the registered person has received a refund of more than Rs.1 lakh in the preceding financial year on account of unutilised credit under clause (i) (zero-rated supplies) or clause (ii) (inverted duty structure) of the first proviso to Section 54(3); (d) the registered person has discharged, through the electronic cash ledger, an amount in excess of 1% of the total output tax liability, applied cumulatively up to the month in the current financial year; or (e) the registered person is a Government department, a PSU, a local authority or a statutory body. Further, the Commissioner or an officer authorised by him may remove the restriction after such verification and safeguards as he may deem fit. The following provisions stand contravened (in each case read with the corresponding provisions of the Telangana Goods and Services Tax Act, 2017 [TGST Act]):

1. **Rule 86B of the CGST Rules, 2017 read with Section 49(4) of the CGST Act, 2017** - in 9 months the output tax was paid through the electronic credit ledger to the extent of 100% instead of 99%, in the months in which the taxable supplies exceeded Rs.50 lakh and no exception was met (see the month-wise table in Part B). Section 49(4) permits the use of the credit ledger for output tax 'in such manner and subject to such conditions and within such time as may be prescribed' - Rule 86B is the prescribed condition.
2. **Section 39(7)** of the CGST Act, 2017 - the output tax to the extent of the 1% of each month was not paid in cash by the due date of the return.

Note: *The firm has not mis-stated any fact in its returns, no credit is ineligible, and the tax liability has been correctly self-assessed. The Master Chart (Template IV, row 11) cites Section 73 for this default; for FY 2025-26, Section 74A is the demand section [Section 74A(12)]. Rule 21(g) makes a violation of Rule 86B a ground for cancellation of registration; it is mentioned in the Consequences but is not proposed. Section 76 and Section 122(1)(vii)/(ix) have no application. The case differs from Exercise-66, where reverse charge tax cannot be paid from the credit ledger at all (Section 2(82), Rule 85(4)); here the credit ledger can be used, but only up to 99% of the monthly output tax.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the firm to the following action under the CGST Act, 2017 (read with the corresponding provisions of the TGST Act, 2017):

1. Applying Rule 86B month by month - the rule is applied separately for each month, as follows: (i) is the value of taxable supplies other than exempt and zero-rated supplies in the month above Rs.50 lakh? (ii) if so, does any exception apply? (iii) if not, the credit ledger can be used up to 99% of the output tax of that month, and 1% must be paid in cash. Exceptions (a) to (c) and (e) are tested on facts that do not change during the year; exception (d) is tested cumulatively month by month, and the Commissioner's power of relaxation depends on an order. The checks in this case are as follows.
2. Exception (a) - income tax. The proviso requires payment of more than Rs.1 lakh 'in each of the last two financial years' for which the time limit to file the return of income under Section 139(1) has expired -

for the months of this case, these are FY 2022-23 and FY 2023-24 or FY 2023-24 and FY 2024-25 according to the month, in either case including FY 2023-24 and one other year. The payment of Rs.1,40,000/- by the firm in FY 2023-24 meets the test for that one year only; the firm paid Rs.84,000/- in FY 2022-23 and Rs.62,000/- in FY 2024-25; Mr. Z paid Rs.1,12,000/- in FY 2023-24 and less than Rs.1 lakh in each of the other two years, and Mr. P paid less than Rs.1 lakh in FY 2023-24. As the test is 'each' of the two years, no one of them satisfies it, whichever pair of years is taken. The argument that the tax of the firm and the partners may be added is not accepted: the proviso names the registered person or one of the persons named in it (the proprietor, karta, managing director, or any of its two partners, whole-time directors...), and does not provide for aggregation (UNVERIFIED as to any ruling - none is relied on). The exception is not available in any month.

3. Exceptions (b), (c) and (e); relaxation. No refund under Section 54(3) was received in FY 2024-25 (the refund register is nil) and the firm is not a Government department, PSU, local authority or statutory body. The firm's application of 15.01.2026 for relaxation does not suspend the restriction: the power is that of the Commissioner (or his authorised officer), is exercised by an order giving reasons, and has not been exercised. A pending application is not a relaxation.

4. Exception (d) - cumulative cash. The firm paid Rs.1,20,000/- in cash in April 2025. The cumulative cash paid is in excess of 1% of the cumulative output tax in April 2025 (Rs.55,800/-) and in May 2025 (Rs.1,17,000/-), so that the restriction did not apply in those months even though the supplies were above Rs.50 lakh; from June 2025 the cumulative 1% (Rs.1,75,500/- in June) exceeds the cash paid, and the exception ceases to apply (see Table A). January 2026 is outside the rule, as the taxable supplies (Rs.47,90,000/-) did not exceed Rs.50 lakh.

Table A - Exception (d): cumulative cash against 1% of cumulative output tax

Month	Cumulative output tax (Rs.)	Cumulative cash paid (Rs.)	1% of cumulative output tax (Rs.)	Cash more than 1%? (exception (d))
April 2025	55,80,000	1,20,000	55,800	Yes
May 2025	1,17,00,000	1,20,000	1,17,000	Yes
June 2025	1,75,50,000	1,20,000	1,75,500	No
July 2025	2,40,30,000	1,20,000	2,40,300	No
August 2025	3,03,66,000	1,20,000	3,03,660	No
September 2025	3,64,50,000	1,20,000	3,64,500	No
October 2025	4,35,60,000	1,20,000	4,35,600	No
November 2025	5,02,38,000	1,20,000	5,02,380	No
December 2025	5,68,26,000	1,20,000	5,68,260	No
January 2026	5,76,88,200	1,20,000	5,76,882	No
February 2026	6,43,48,200	1,20,000	6,43,482	No
March 2026	7,17,64,200	1,20,000	7,17,642	No

Table B - Month-wise cash required and shortfall (Rule 86B)

Month	Taxable supplies above Rs.50 lakh?	Restriction applies?	1% cash required (Rs.)	Shortfall (Rs.)
April 2025	Yes	No	-	Nil
May 2025	Yes	No	-	Nil
June 2025	Yes	Yes	58,500	58,500
July 2025	Yes	Yes	64,800	64,800
August 2025	Yes	Yes	63,360	63,360

Month	Taxable supplies above Rs.50 lakh?	Restriction applies?	1% cash required (Rs.)	Shortfall (Rs.)
September 2025	Yes	Yes	60,840	60,840
October 2025	Yes	Yes	71,100	71,100
November 2025	Yes	Yes	66,780	66,780
December 2025	Yes	Yes	65,880	65,880
January 2026	No	No	-	Nil
February 2026	Yes	Yes	66,600	66,600
March 2026	Yes	Yes	74,160	74,160
TOTAL			**5,92,020**	**5,92,020**

5. Demand under Section 74A(1) (FY 2025-26: Section 74A(12)) - the demand is for the payment of cash of Rs.5,92,020/- (central tax Rs.2,96,010/- and Telangana State tax Rs.2,96,010/-) as the 1% of the output tax of the 9 months of June 2025 to December 2025, February 2026 and March 2026. It is not a demand of tax in addition to what has been paid: the output tax of those months has been paid, but to the extent of the 1% by a mode that the rule does not permit, and so that part is treated as tax not paid. Since the returns were filed on time, the proviso to Section 50(1) (interest on that portion of the tax which is paid by debiting the cash ledger, where the return is filed late) is not in play. The notice can be issued up to 30.06.2030 [Section 74A(2)] and the order within twelve months of the notice, extendable by six months [Section 74A(7)].

6. The credit is not lost. This is not a demand of ineligible credit. The credit availed is valid and the ledger balance is untouched by Rule 86B: the rule restricts the use of the credit for 1% of the monthly output tax, and does not disallow any of it. The excess credit which is lying in the ledger (it carried a balance throughout the year) remains available for later months, up to the 99% limit. However, the 1% of the output tax of each month was in fact discharged out of the credit ledger (the debit of Rs.5,92,020/- was applied against the liability); once the same amount is paid in cash on the demand, the firm will have paid it twice. The cash paid on the demand is not a 'recoverable' or an advance that can be set against a future liability: there is no provision of the Act or Rules that treats cash paid in excess of the liability as an advance. The remedy is the restoration of the credit wrongly debited, the mechanism of which could not be verified in the Rules (UNVERIFIED - the same position as in Exercise-66; the notice records that the credit availed is not disputed and that restoration will be considered on proof of payment); in the alternative the firm could apply for refund of the excess payment under Section 54 (UNVERIFIED - whether the Section 54 route lies for a payment through the credit ledger).

7. Interest - under **Section 50(1)** at 18% per annum on the cash shortfall only (not on the 99% of the output tax which was validly paid by the credit), from the day after the due date of the GSTR-3B of each month (20th of the following month) till payment. Illustratively, up to 30.11.2026, interest is Rs.1,06,376/- (Rs.53,188/- each under the CGST and TGST Acts) - see the working below. The 24% rate under Section 50(3) and Rule 88B is not applicable, since the credit was not wrongly availed.

8. Penalty - under **Section 74A(5)(i)**, being 10% of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.29,601/- each under the CGST and TGST Acts (total Rs.59,202/-). Section 74A(5)(ii) is not proposed: the facts were fully disclosed in the returns, the firm claimed an exception openly on a reading of the rule, applied to the Commissioner for relaxation and did not conceal anything. This is a non-fraud default. Section 74A has no general waiver for a bona fide default, and Section 126 does not apply to a penalty expressed as a percentage [Section 126(6)]; the way to avoid the penalty is to pay the tax with interest within sixty days of the notice [Section 74A(8)(ii)]. Section 74A(11) is a caution: where self-assessed tax is not paid within thirty days of its due date, the penalty under Section 74A(5)(i) is payable even on payment under Section 74A(8); the 1% cash component here was not paid within thirty days, and whether it is 'self-assessed tax' for this purpose is not settled (UNVERIFIED), so the notice does not promise nil penalty. No penalty on the partners is proposed (Section 122 is not attracted).

9. Alternative routes not adopted - (a) recovery of the self-assessed tax without notice under Section

75(12) read with Section 79: not adopted as the firm disputes the liability and the argument of exception requires a reasoned order; (b) cancellation of registration under Section 29(2)(a) read with Rule 21(g): disproportionate for a default of this kind, which is curable by payment; (c) blocking of the credit ledger under Rule 86A: the credit is not ineligible, and blocking would only increase the dispute.

10. Recovery and prosecution - recovery under Sections 78 and 79, if the amount is not paid. There is no offence under Section 132. Authority - central tax Rs.2,96,010/-, within the limit of the Superintendent (Circular No. 31/05/2018-GST).

Table C - Illustrative working of interest on the cash shortfall (18%, simple, up to 30.11.2026) and penalty

Month	Shortfall (Rs.)	Due date of GSTR-3B	Days	Interest (Rs.) (both Acts)
June 2025	58,500	20.07.2025	498	14,366
July 2025	64,800	20.08.2025	467	14,924
August 2025	63,360	20.09.2025	436	13,624
September 2025	60,840	20.10.2025	406	12,182
October 2025	71,100	20.11.2025	375	13,148
November 2025	66,780	20.12.2025	345	11,362
December 2025	65,880	20.01.2026	314	10,202
February 2026	66,600	20.03.2026	255	8,376
March 2026	74,160	20.04.2026	224	8,192
TOTAL	**5,92,020**			**1,06,376**

Basis: *Tax demanded in cash: Rs.5,92,020/- (CGST Rs.2,96,010/- + TGST Rs.2,96,010/-). Penalty under Section 74A(5)(i): 10% of Rs.2,96,010/- = Rs.29,601/- under each Act (above Rs.10,000/-); total Rs.59,202/-. Interest is computed for each Act on half of the shortfall and added.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Distributors, a partnership firm, Plot [•], Industrial Area, Kukatpally, Hyderabad, Telangana (GSTIN 36AAAFX0000A1Z8), is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Hyderabad CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the output tax of the months of June 2025 to December 2025, February 2026 and March 2026, which was discharged by debiting the electronic credit ledger to the extent of 100% in contravention of Rule 86B of the CGST Rules, 2017 read with Section 49(4) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017, should not be held not to have been paid in cash to the extent of 1% of the output tax of each month;

(ii) an amount of Rs.2,96,010/- (Central tax) and Rs.2,96,010/- (Telangana State tax), total Rs.5,92,020/-, being the 1% of the output tax of the said months required to be paid in cash, as detailed in Annexure-A, should not be demanded and recovered from it in cash under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TGST Act, 2017 should not be charged and recovered on the amount at (ii) above, month-wise from the day after the due date of the return of the respective month till the date of payment;

(iv) a penalty of Rs.29,601/- (Central tax) and Rs.29,601/- (Telangana State tax), total Rs.59,202/-, being 10% of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act,

2017/TGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-HYDERABAD

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Hyderabad CGST Commissionerate, Telangana

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Telangana Goods and Services Tax Act, 2017)

To,
M/s XXX Distributors (GSTIN 36AAAFX0000A1Z8), a partnership firm,
Plot [●], Industrial Area, Kukatpally, Hyderabad, Telangana
(through its Partners, Mr. Z and Mr. P).

(hereinafter referred to as 'the Noticee' or 'the firm')

WHEREAS the Noticee, a wholesale distributor registered under the CGST Act, 2017/TGST Act, 2017, made intra-State taxable supplies at 18% (9% central tax and 9% Telangana State tax) with a monthly taxable value of Rs.3 crore to Rs.4 crore during FY 2025-26, except in January 2026 (Rs.47,90,000/-), and has no exempt or zero-rated supplies (RUD-1);

2. AND WHEREAS in the scrutiny of the returns under Section 61 it was noticed that in the GSTR-3B for April 2025 to March 2026 (RUD-1), the output tax was shown as paid entirely through the electronic credit ledger in 9 months in which the value of taxable supplies other than exempt and zero-rated supplies exceeded Rs.50 lakh, with nil payment in cash, as per the electronic liability register and credit and cash ledgers (RUD-2), and that the firm had paid cash only in April 2025 (Rs.1,20,000/-);

3. AND WHEREAS a notice in FORM GST ASMT-10 dated 22.06.2026 (RUD-3) was issued to the Noticee, which replied on 20.07.2026 (RUD-4) that the income tax paid by the firm and the partners exceeded Rs.1 lakh and the restriction did not apply, that the Revenue had lost nothing, that the default was bona fide, and that an application for relaxation dated 15.01.2026 had been made to the Principal Commissioner, on which no order has been passed (RUD-5); the reply was not found acceptable;

4. AND WHEREAS in his statement recorded on 12.08.2026 under Section 70 of the CGST Act, 2017 (RUD-6), Mr. Z, Partner, stated that the firm has no export or Government supplies and has never claimed refund under Section 54, that it pays cash only when the credit is short, and produced the income-tax particulars (RUD-7) showing that the income tax paid by the firm was Rs.84,000/-, Rs.1,40,000/- and Rs.62,000/-, by Mr. Z Rs.55,000/-, Rs.1,12,000/- and Rs.40,000/-, and by Mr. P Rs.31,000/-, Rs.78,000/- and Rs.90,000/- in FY 2022-23, FY 2023-24 and FY 2024-25 respectively;

5. AND WHEREAS Rule 86B of the CGST Rules, 2017 provides that where the value of taxable supplies other than exempt supplies and zero-rated supplies in a month exceeds Rs.50 lakh, the registered person shall not use the amount available in the electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent of such tax liability, subject to the exceptions in the proviso and to the power of the Commissioner to remove the restriction; and on verification none of the exceptions is satisfied: the income tax paid is not more than Rs.1 lakh in each of the last two financial years in the case of the firm or any of the two partners (the amounts at RUD-7), no refund under Section 54(3) was received in FY 2024-25 (RUD-8), the Noticee is not a Government department, PSU, local authority or statutory body, the cumulative cash paid ceased to exceed 1% of the cumulative output tax from June 2025 (Annexure-A), and no order of relaxation has been passed by the Commissioner;

6. AND WHEREAS the cash required to be paid, being 1% of the output tax of the months in which the restriction applied, is Rs.5,92,020/- (central tax Rs.2,96,010/- and Telangana State tax Rs.2,96,010/-) for June to December 2025, February 2026 and March 2026, and has not been paid, as per Annexure-A; the credit availed by the Noticee is not disputed and no reversal of credit is proposed; the amount of the

credit debited in excess of 99% will be examined for restoration, on proof of payment of the cash, in the order to be passed;

7. AND WHEREAS the Noticee disclosed all the facts in its returns and made an application to the Commissioner for relaxation; the non-payment of the cash therefore appears to be for a reason other than fraud or wilful misstatement or suppression of facts, and penalty under Section 74A(5)(i) of the CGST Act, 2017/TGST Act, 2017 appears to be attracted;

8. AND WHEREAS it thus appears that the Noticee has contravened Rule 86B of the CGST Rules, 2017 read with Section 49(4) and Section 39(7) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017, and is liable to demand of the amount in cash under Section 74A(1), interest under Section 50(1) and penalty under Section 74A(5)(i);

NOW, THEREFORE

M/s XXX Distributors is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Hyderabad CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the output tax of the months of June 2025 to December 2025, February 2026 and March 2026, which was discharged by debiting the electronic credit ledger to the extent of 100% in contravention of Rule 86B of the CGST Rules, 2017 read with Section 49(4) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017, should not be held not to have been paid in cash to the extent of 1% of the output tax of each month;

(ii) an amount of Rs.2,96,010/- (Central tax) and Rs.2,96,010/- (Telangana State tax), total Rs.5,92,020/-, being the 1% of the output tax of the said months required to be paid in cash, as detailed in Annexure-A to this notice, should not be demanded and recovered from it in cash under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TGST Act, 2017 should not be charged and recovered on the amount at (ii) above, month-wise from the day after the due date of the return of the respective month till the date of payment;

(iv) a penalty of Rs.29,601/- (Central tax) and Rs.29,601/- (Telangana State tax), total Rs.59,202/-, being 10% of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/TGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

9. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to Section 74A(8) of the CGST Act, 2017/TGST Act, 2017, under which, on payment of the amount with interest under Section 50 before the notice (and no notice is then issued) or within sixty (60) days of this notice, no penalty is payable and all proceedings in respect of this notice are deemed to be concluded, subject to Section 74A(11); the amount is to be paid by debiting the electronic cash ledger;
- the credit availed by the Noticee is not disputed in this notice and the credit lying in the electronic credit ledger is not affected; on proof of the payment in cash the question of restoration of the credit debited in excess of 99% will be considered in the order; the Noticee may also pursue its application for relaxation under the second proviso to Rule 86B before the Principal Commissioner, but its pendency does not suspend the restriction;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/TGST Act, 2017, or any other law for the time being in

force.

List of Relied Upon Documents (RUDs):

RUD-1: GSTR-3B (and GSTR-1) of the Noticee for April 2025 to March 2026 (portal print-outs);

RUD-2: Electronic liability register, electronic credit ledger and electronic cash ledger of the Noticee for FY 2025-26;

RUD-3: Notice in FORM GST ASMT-10 dated 22.06.2026;

RUD-4: Reply of the Noticee dated 20.07.2026;

RUD-5: Application dated 15.01.2026 of the Noticee to the Principal Commissioner for relaxation under Rule 86B, and the record that no order has been passed;

RUD-6: Statement of Mr. Z, Partner, recorded on 12.08.2026 under Section 70;

RUD-7: Income-tax particulars (returns, computations and challans) of the firm, Mr. Z and Mr. P for FY 2022-23, FY 2023-24 and FY 2024-25 produced on 12.08.2026;

RUD-8: Refund register of the Noticee for FY 2024-25 (nil);

Annexure-A: Month-wise statement of Rule 86B checks (Tables A and B), cash shortfall and calculation of interest [as per the tables in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Hyderabad CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Hyderabad, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, GSTIN, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. 'M/s XXX Distributors', Mr. Z and Mr. P are fictional. The rate of 18% is assumed for the goods supplied; the goods are not named, and the rate must be checked for the actual goods (the rates changed on 22.09.2025).*
- ***Teaching point - apply Rule 86B month by month.** The rule has a monthly turnover test (above Rs.50 lakh of taxable supplies other than exempt and zero-rated), a set of exceptions (income tax in each of the last two years, refunds, Government bodies, the Commissioner's relaxation) and the cumulative-cash exception, which is tested month by month. Build the tables as in Part B: turnover, output tax, credit used, 1% required, shortfall, then interest from the due date of the return. Check every exception on the facts and record the result in the notice - a notice that ignores an exception pleaded by the noticee cannot sustain. Compare Exercise-66: there the credit ledger could not be used at all for reverse charge tax (Section 2(82), Section 49(4), Rule 85(4)); here the credit ledger can be used, but not beyond 99% of the output tax of a month.*
- ***The demand is cash, not credit.** The demand is only the 1% (the cash shortfall), with interest on that only and a non-fraud penalty under Section 74A(5)(i); no credit is denied or reversed and no credit lying in the ledger is affected. The credit debited for the 1% has to be restored after the cash is paid (UNVERIFIED mechanism - settle it with the Commissionerate; see also Exercise-66). The Master Chart cites Section 73 for this default; FY 2025-26 requires Section 74A. Rule 21(g) (cancellation ground for violation of Rule 86B) was verified from a secondary source; it is not proposed here.*
- ***Points to be checked before issue.** (a) The 'last two financial years for which the time limit to file the return of income has expired' depends on the month (the time limit for FY 2024-25 expires only in the middle of FY 2025-26, and may have been extended); the facts of this exercise are drawn so that the test fails whichever pair of years is taken - in a real case, check the due dates and the extensions. (b) The treatment of 'any of its two partners' in the income-tax exception and the question of aggregating the tax paid by the firm and the partners were decided on the text of the rule; a reported ruling of an*

Authority for Advance Ruling that the tax of several persons cannot be added together was noticed from a secondary summary only, and is NOT cited. (c) Section 74A(11) and Section 75(13) are applied as in Exercises 52 and 66 (UNVERIFIED as to their exact application). (d) Whether the portal itself blocks payment above 99% of the output tax from the credit ledger was not verified.

- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.2,96,010/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

***

Exercise 68

Input tax credit taken on documents in employees' names, proforma invoices, delivery challans and invoices bearing a wrong GSTIN - Section 16(2)(a), (aa) read with Rule 36

Exercise 68: Input tax credit taken on documents in employees' names, proforma invoices, delivery challans and invoices bearing a wrong GSTIN - Section 16(2)(a), (aa) read with Rule 36

Situation in Brief:

1. M/s XXX Engineering Solutions Pvt. Ltd. (hereinafter 'M/s XXX'), Whitefield, Bengaluru, Karnataka (GSTIN 29XXXXX0000X1Z5), provides software and engineering design services to domestic clients at the standard rate of 18% and is a regular taxpayer filing FORM GSTR-1 and FORM GSTR-3B monthly. Mr. P is its Senior Manager (Finance and Accounts) and handles the preparation of FORM GSTR-3B. The company claims input tax credit (ITC) in its FORM GSTR-3B from its purchase register ('books') and has never run a reconciliation of the books with FORM GSTR-2B.

2. A desk scrutiny of the returns of M/s XXX for April 2025 to January 2026 by the CGST Range, Bengaluru West Commissionerate showed that ITC claimed in FORM GSTR-3B exceeded the ITC reflected in FORM GSTR-2B. Because the individual documents behind the difference were not available in FORM GSTR-2B at all, a summons dated 02.03.2026 was issued under Section 70 of the CGST Act, 2017 to Mr. P, who appeared on 09.03.2026 and produced (a) the purchase register and ITC ledger for April 2025 to January 2026, (b) 38 hotel invoices, 14 air tickets with invoices and 61 restaurant bills, (c) 17 proforma invoices/estimates and six delivery challans of vendors, (d) 13 vendor invoices bearing a GSTIN other than that of M/s XXX, (e) the employee travel policy and (f) the electronic credit ledger extract.

3. The statement of Mr. P was recorded on 09.03.2026 under Section 70, wherein he stated, inter alia, that (i) employees book hotels, flights and meals while on client visits within Karnataka on their own or personal-card payments and the company reimburses them against the bill; the accounts team books the GST shown on the bill as ITC in the month of reimbursement, without checking whose name or GSTIN the bill bears; (ii) the travel policy does not require employees to give the company's GSTIN at booking; (iii) for urgent project procurement, some vendors dispatched goods with a delivery challan and a proforma invoice and promised a tax invoice 'later'; the accounts team booked the tax shown on the proforma (or, where the challan showed none, tax at 18% worked out by the team) as ITC because the goods had been received and used; (iv) 13 invoices carry the GSTIN of M/s AAA Systems Pvt. Ltd., Mysuru, which has no connection with the company, because the vendor master record of six suppliers was copied wrongly in 2023; (v) all the goods and services were actually received and used for the business, and the vendors were paid; and (vi) the books were never reconciled with FORM GSTR-2B for the period in question.

4. Examination of the documents and the vendor and hotel confirmations obtained under Section 70 grouped the ITC claimed into three categories, none of which is reflected in FORM GSTR-2B of M/s XXX, as follows:

Ref.	Category of document on which ITC is claimed	Nos.	Value of documents (Rs.)	ITC claimed (Rs.)
1a	Hotel stays billed in employee names (no GSTIN)	38	16,50,000	1,89,000
1b	Intra-State air tickets in employee names (no GSTIN)	14	9,12,000	1,26,000
1c	Restaurant bills in employee names (staff meals on tours)	61	5,40,000	96,000
2a	Proforma invoices / 'estimates' of vendors (no tax invoice)	17	62,00,000	11,16,000
2b	Delivery challans (no tax shown; ITC self-computed)	6	18,00,000	3,24,000
3a	Invoices bearing GSTIN of another company, M/s AAA Systems	11	37,66,000	6,78,000
3b	Invoices bearing a non-existent (mis-typed) GSTIN	2	6,33,000	1,14,000
	TOTAL	**149**	**1,55,01,000**	**26,43,000**

Note: ITC claimed is the central tax and Karnataka State tax in equal halves in every case (intra-State supplies); no integrated tax is involved.

5. Further facts on each category, as recorded in the statement and the confirmations obtained from the suppliers:

(a) Category 1 (documents in the employee's name). The 38 hotel invoices are from eleven hotels at Mysuru and Mangaluru and show the employee's name and mobile number; none shows the GSTIN of M/s XXX. The 14 air tickets (intra-Karnataka sectors) show the passenger's name and no GSTIN. The 61 restaurant bills are for meals of employees during the tours. None of these appears in FORM GSTR-2B (the hotels and the airlines reported them as supplies to unregistered customers). Following a letter dated 20.03.2026 inviting the company to regularise, 22 of the hotel invoices (ITC Rs.1,05,000/-) were re-issued by the hotels, on confirmations that the stays were official stays of M/s XXX employees, with the GSTIN of M/s XXX, were reported by the hotels in FORM GSTR-1 for September 2026 and are reflected in FORM GSTR-2B of M/s XXX for September 2026. The airlines and the other hotels declined to amend the invoices.

(b) Category 2 (no tax invoice). Seventeen proforma invoices/estimates of nine vendors carry the words 'proforma - not a tax invoice' or 'estimate'; the six delivery challans carry no tax and the ITC of Rs.3,24,000/- is tax at 18% worked out by the accounts team; the vendors' confirmations state that no tax was charged or collected against the challans. Three vendors (ITC Rs.3,60,000/-) issued regular tax invoices dated 10.09.2026 against their proforma invoices, reported them in FORM GSTR-1 for September 2026 and the invoices are in FORM GSTR-2B of M/s XXX for September 2026. The remaining vendors have not issued tax invoices and have not responded.

(c) Category 3 (wrong GSTIN). Eleven invoices of six suppliers (ITC Rs.6,78,000/-) bear the GSTIN of M/s AAA Systems Pvt. Ltd.; the suppliers reported them in FORM GSTR-1 against that GSTIN and M/s AAA Systems Pvt. Ltd. has confirmed that it has not used them and does not intend to. Two further invoices (ITC Rs.1,14,000/-) carry a 15-character GSTIN that does not exist (a typing error); the supplier cancelled them with credit notes and issued fresh invoices with the correct GSTIN, which are in FORM GSTR-2B of M/s XXX for September 2026. The other six suppliers have not corrected the 11 invoices.

6. The electronic credit ledger extract shows that the ITC in respect of the documents on which no cure has been made (Rs.20,64,000/-, month-wise below) was taken in FORM GSTR-3B for the month shown, filed on the due date (the 20th of the next month). In each of April to December 2025 the ledger balance after the set-off of output tax was nil, i.e. the credit was utilised for payment of output tax in that return; for January 2026 the closing balance of the electronic credit ledger was Rs.9,40,000/-, which was more than the ITC of Rs.3,60,000/- taken on the uncured documents for that month. The ledger balance on 09.03.2026 was still Rs.9,40,000/-.

Month of FORM GSTR-3B	Date filed	ITC on uncured documents (Rs.)	Ledger balance after set-off (Rs.)
April 2025	20.05.2025	1,26,000	Nil
May 2025	20.06.2025	1,92,000	Nil
June 2025	20.07.2025	2,16,000	Nil
July 2025	20.08.2025	1,38,000	Nil
August 2025	20.09.2025	2,34,000	Nil
September 2025	20.10.2025	2,10,000	Nil
October 2025	20.11.2025	2,40,000	Nil
November 2025	20.12.2025	1,86,000	Nil
December 2025	20.01.2026	1,62,000	Nil
January 2026	20.02.2026	3,60,000	9,40,000
TOTAL		**20,64,000**	

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX to show cause as to why action should not be taken against it, while listing the proposed action to be taken against M/s XXX, deciding category by category which part of the credit is wrongly availed and which is curable or eligible.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Engineering Solutions Pvt. Ltd., Bengaluru West CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions stand contravened (in each case read with the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017 [KGST Act] and the Rules made under the two Acts):

1. **Section 16(1) and Section 16(2)(a) of the CGST Act, 2017 read with Rule 36(1) and Rule 36(2) of the CGST Rules, 2017** - ITC can be taken only by a registered person who is in possession of a tax invoice or debit note issued by a registered supplier or such other tax-paying document as is prescribed. Rule 36(1) prescribes the documents on which ITC may be claimed: (a) an invoice issued by the supplier under Section 31; (b) an invoice issued under Section 31(3)(f) (reverse charge), subject to payment of tax; (c) a debit note issued by the supplier under Section 34; (d) a bill of entry or similar document for imports; and (e) an invoice or credit note issued by an Input Service Distributor under Rule 54(1). Rule 36(2) adds that ITC is available only if the document contains the applicable particulars of Chapter VI, and its proviso saves a document that lacks some particulars only if it still shows the tax charged, the description, the total value, the **GSTIN of the supplier and of the recipient** and, for an inter-State supply, the place of supply. Proforma invoices, estimates and delivery challans are not in the list at all (Category 2). Documents that show the employee's name and no GSTIN of the recipient (Category 1) and documents bearing a GSTIN that is not the claimant's (Category 3) do not satisfy the proviso to Rule 36(2).
2. **Section 16(2)(aa) of the CGST Act, 2017 read with Rule 36(4)** - ITC is allowed only if the supplier has furnished the details of the invoice in the statement of outward supplies (FORM GSTR-1/the invoice furnishing facility) and the details have been communicated to the recipient under Section 37, and the credit is reflected in FORM GSTR-2B of the recipient (Section 38, Rule 60(7)). None of the documents in the three categories was reflected in FORM GSTR-2B of M/s XXX when the credit was taken. Rule 36(4) is in force in its present form (substituted with effect from 01.01.2022) and is not omitted.
3. **Section 17(5)(b)(i) of the CGST Act, 2017** - ITC is not available on food and beverages and outdoor catering, except where it is obligatory for an employer to provide the same to its employees under any law or where the inward supply of a particular category is used for making an outward taxable supply of the same category. Neither exception applies to the staff meals of Category 1 (restaurant bills): the credit is blocked whatever the name or GSTIN on the bill.
4. **Section 41(1) of the CGST Act, 2017** - the entitlement to take the credit of eligible ITC as self-assessed in the return is limited to ITC that is 'eligible'; the credit at Rs.20,64,000/- was not eligible when taken.

Note: *Section 16(2)(b) (receipt of goods/services) is not contravened because the goods and services were in fact received, and Section 16(2)(ba) (credit restricted in FORM GSTR-2B under Section 38) is not attracted because no restriction was communicated; the defect is in the document and its reporting. For the same reason the offence is not one of ITC 'without actual receipt of goods or services' under Section 122(1)(vii), and it is not a case of non-existent suppliers (Exercise-03) because every supplier exists, filed returns and confirmed the supply. It is also different from Exercise-07, where the documents are valid but the claim exceeds the credit in FORM GSTR-2B.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the KGST Act, 2017):

1. Route - ITC taken in contravention of Section 16 is ITC 'wrongly availed', recoverable by notice under **Section 74A(1)** (FY 2025-26 is within Section 74A, which applies from FY 2024-25). The notice may be issued up to 42 months from the due date of the annual return for FY 2025-26 (31.12.2026), i.e. up to 30.06.2030 [Section 74A(2)], and the order must be passed within twelve months of the notice, extendable by six months [Section 74A(7)]. The period covered is April 2025 to January 2026; FORM

GSTR-3B for February 2026 onwards can be taken up by a statement under Section 74A(3).

2. Category-by-category decision - the ITC conditions of Section 16(2) are cumulative and are tested when the credit is taken: possession of a valid document (clause (a)), receipt (clause (b)), tax actually paid (clause (c)), the return (clause (d)) and, since the Finance Act, 2022 amendments, the matching of the supplier's FORM GSTR-1 with the recipient's FORM GSTR-2B (clause (aa)). A defect in any one is enough to deny the credit. The decisions are:

Category	ITC claimed (Rs.)	Decision	Curable/eligible (Rs.)	ITC wrongly availed (Rs.)
1a Hotel stays	1,89,000	Document defective (no recipient GSTIN). Curable: 22 invoices re-issued with the GSTIN and reflected in GSTR-2B for Sept. 2026, within the Section 16(4) time limit (30.11.2026 for FY 2025-26 invoices). Not curable for the other 16 invoices.	1,05,000	84,000
1b Air tickets	1,26,000	Same defect; the airlines declined to issue invoices to the company. Not cured.	Nil	1,26,000
1c Restaurant bills	96,000	Blocked by Section 17(5)(b)(i); no re-issue of the bill can cure it.	Nil	96,000
2a Proforma / estimates	11,16,000	Not a Rule 36(1) document. Curable only by a tax invoice: three vendors (ITC Rs.3,60,000/-) issued tax invoices on 10.09.2026, now in GSTR-2B. Others not cured.	3,60,000	7,56,000
2b Delivery challans	3,24,000	No tax charged by the vendor; the credit is the company's own computation, so no 'tax paid' by any supplier. Not curable by the recipient.	Nil	3,24,000
3a Wrong GSTIN (AAA)	6,78,000	Invoice is addressed to another person. Not cured; only the suppliers can cancel and re-issue.	Nil	6,78,000
3b Wrong GSTIN (typing error)	1,14,000	Cancelled and re-issued with the correct GSTIN, in GSTR-2B for Sept. 2026. Eligible.	1,14,000	Nil
TOTAL	**26,43,000**		**5,79,000**	**20,64,000**

Basis: *Where the missing condition has been satisfied before the notice and within the time limit of Section 16(4), the credit would be admissible in any case, the supplier's tax having been paid and reported, and no demand is proposed for it. The employee-name hotel bill is curable not because of any circular (none is relied on here) but because the document, once re-issued with the recipient's GSTIN and reported, becomes a Rule 36(1)(a) document that is in GSTR-2B; where the supplier will not re-issue it, the ITC is not available. No interest is proposed on the cured portion (Rs.5,79,000/-): this is a policy view for the proper officer and is explained in the drafting notes.*

3. Interest - under **Section 50(3) read with Rule 88B(3)** at 24% per annum, only on ITC wrongly availed **and utilised**. Utilisation is determined under the Explanation to Rule 88B: ITC is utilised when the ledger balance falls below the wrongly availed amount, and the date is the due date or the date of filing of FORM GSTR-3B, whichever is earlier. On this test the credit of April to December 2025 (Rs.17,04,000) was utilised (ledger balance nil) on the due dates shown in the table below. The credit of January 2026 (Rs.3,60,000/-) was not utilised, since the ledger balance (Rs.9,40,000/-) always exceeded the wrongly availed amount; no interest under Section 50(3) is charged on it, but the credit remains recoverable under Section 74A and, if not reversed, the electronic credit ledger may be blocked under Rule 86A. Interest worked to 30.11.2026 on the utilised credit is Rs.4,84,040/- (Rs.2,42,020/- each under the CGST and KGST Acts).

Month	Utilised on	ITC wrongly availed (Rs.)	Days to 30.11.2026	Interest @24% (Rs.)
April 2025	20.05.2025	1,26,000	559	46,313

Month	Utilised on	ITC wrongly availed (Rs.)	Days to 30.11.2026	Interest @24% (Rs.)
May 2025	20.06.2025	1,92,000	528	66,658
June 2025	20.07.2025	2,16,000	498	70,730
July 2025	20.08.2025	1,38,000	467	42,375
August 2025	20.09.2025	2,34,000	436	67,084
September 2025	20.10.2025	2,10,000	406	56,061
October 2025	20.11.2025	2,40,000	375	59,178
November 2025	20.12.2025	1,86,000	345	42,194
December 2025	20.01.2026	1,62,000	314	33,447
January 2026	20.02.2026	3,60,000	-	Nil
TOTAL		**20,64,000**		**4,84,040**

4. Penalty - under **Section 74A(5)(i)**, being 10% of the tax or Rs.10,000/-, whichever is higher, as there is no fraud, wilful misstatement or suppression: Rs.2,06,400/- (Rs.1,03,200/- each under the CGST and KGST Acts). The credit was taken openly in FORM GSTR-3B from the books; the documents were produced on summons; the goods and services were received and the vendors paid; and the cause of the default was careless accounting practice (taking credit from the books without reconciliation with FORM GSTR-2B), as explained in the statement. Those facts do not support an allegation of intent to evade. If M/s XXX pays the tax and interest within 60 days of the notice, no penalty is payable [Section 74A(8)].
5. Specific offence penalties - none is proposed. Section 122(1)(vii) requires ITC without actual receipt of goods or services, which is not the case; the failure is covered by the penalty under Section 74A(5)(i), and in any event Section 75(13) prevents penalty twice for the same act and Section 126 discourages penalty for minor breaches that have no tax effect (the cured Rs.5,79,000/-).
6. Recovery - under Sections 78 and 79 if the confirmed amount is not paid in time.
7. Alternative route (not adopted) - voluntary reversal in FORM GSTR-3B/DRC-03 before the notice, with interest, under Section 74A(8)(i) would have avoided the notice altogether; M/s XXX was invited to do so by the letter dated 20.03.2026 and responded only for the cured items.
8. Prosecution - not proposed. The credit is below the monetary limits of Template XI, and the elements of Section 132(1)(c) (fraudulent availing of credit without invoice or on an invoice without supply) are absent.

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Engineering Solutions Pvt. Ltd., Whitefield, Bengaluru, Karnataka, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of Central Tax, Division - [•], Bengaluru West CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.20,64,000/- (Rs.10,32,000/- central tax and Rs.10,32,000/- Karnataka State tax) taken in FORM GSTR-3B for April 2025 to January 2026 on proforma invoices, estimates and delivery challans, on documents in the names of employees without the GSTIN of the company, on restaurant bills and on invoices bearing the GSTIN of another person, as detailed in Annexure-A, should not be held to be ITC wrongly availed in contravention of Sections 16(1), 16(2)(a) and 16(2)(aa) read with Rule 36(1), (2) and (4) and, in respect of the restaurant bills, Section 17(5)(b)(i) of the CGST Act, 2017/KGST Act, 2017;

(ii) the said amount of Rs.20,64,000/- should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the KGST Act, 2017 (the

ITC of Rs.5,79,000/- on documents since regularised having been excluded from the demand);

(iii) interest under Section 50(3) read with Rule 88B(3) at 24% per annum on the wrongly availed and utilised ITC of Rs.17,04,000, from the dates of utilisation shown in Annexure-B till the date of payment (Rs.4,84,040 up to 30.11.2026), should not be demanded and recovered from them, and why the same interest should not be recovered on the ITC of January 2026 (Rs.3,60,000/-) if it is found to have been utilised;

(iv) a penalty of Rs.1,03,200 (Central tax) and Rs.1,03,200 (Karnataka State tax), total Rs.2,06,400/-, being 10% of the tax, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)); and

(v) the unutilised balance of wrongly availed ITC lying in the electronic credit ledger should not be ordered to be reversed/recovered, and the said ledger balance should not be blocked under Rule 86A until the demand is paid.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[•]/2026-BNGW

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [•], Bengaluru West CGST Commissionerate, Karnataka

Date: [•].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Karnataka Goods and Services Tax Act, 2017)

To,
M/s XXX Engineering Solutions Pvt. Ltd.,
(GSTIN 29XXXXX0000X1Z5), Whitefield, Bengaluru, Karnataka.

(hereinafter referred to as 'the Noticee')

WHEREAS scrutiny of the returns of the Noticee for April 2025 to January 2026 showed that the input tax credit (ITC) claimed in FORM GSTR-3B exceeded the credit reflected in FORM GSTR-2B, the documents behind the difference not being available in FORM GSTR-2B at all (RUD-1);

2. AND WHEREAS a summons dated 02.03.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. P, Senior Manager (Finance and Accounts) of the Noticee (RUD-2), who appeared on 09.03.2026 and produced the purchase register and ITC ledger, the documents listed in the Annexure, the employee travel policy and the electronic credit ledger extract (RUD-3 to RUD-7);

3. AND WHEREAS in his statement recorded on 09.03.2026 under Section 70 (RUD-8), Mr. P stated that the accounts team books ITC from the bills and challans in the purchase register in the month of reimbursement/receipt without checking the name or GSTIN on the document or the reflection in FORM GSTR-2B; that employees book hotels, flights and meals on their own and are reimbursed; that vendors sometimes supplied against a delivery challan and a proforma invoice with a promise of a tax invoice later and the team then took credit on the tax shown on the proforma or worked out at 18% on the challan; that 13 invoices carry the GSTIN of M/s AAA Systems Pvt. Ltd., Mysuru, because of an error in the vendor master; and that the books were never reconciled with FORM GSTR-2B;

4. AND WHEREAS examination of the documents and of the confirmations of the hotels, airlines, vendors and M/s AAA Systems Pvt. Ltd. (RUD-9 to RUD-12) shows that the ITC of Rs.26,43,000/- claimed by the Noticee in FORM GSTR-3B for April 2025 to January 2026 is in respect of the following documents, none of which was reflected in FORM GSTR-2B of the Noticee at the time of claim: (a) 38 hotel invoices, 14 air tickets and 61 restaurant bills in the names of the employees without the GSTIN of the Noticee; (b) 17 proforma invoices/estimates and six delivery challans, none of which is a tax invoice; and (c) 13 invoices bearing a GSTIN other than that of the Noticee, as set out in the table at Annexure-A;

5. AND WHEREAS it appears that under Section 16(2)(a) read with Rule 36(1) and Rule 36(2) of the CGST Rules, 2017, ITC can be taken only on a tax invoice or debit note issued by a registered supplier or other prescribed document containing, at least, the tax charged, the description, the value and the GSTIN of the supplier and the recipient; that under Section 16(2)(aa) read with Rule 36(4) the credit is allowed only if the supplier has furnished the details and the credit is reflected in FORM GSTR-2B; and that the conditions are cumulative;

6. AND WHEREAS the Noticee was invited by letter dated 20.03.2026 (RUD-13) to regularise the position. Ledger and supplier records show that ITC of Rs.5,79,000/- (22 hotel invoices Rs.1,05,000/-; three vendors' tax invoices Rs.3,60,000/-; two re-issued invoices Rs.1,14,000/-) has since been regularised by re-issued or tax invoices reported by the suppliers and reflected in FORM GSTR-2B for September 2026 within the time limit of Section 16(4), and no demand is made for it;

7. AND WHEREAS the balance ITC of Rs.20,64,000/- (Rs.10,32,000/- CGST and Rs.10,32,000/- KGST) remains wrongly availed, being (i) hotel invoices (16 nos.) Rs.84,000/-, air tickets Rs.1,26,000/- and

restaurant bills Rs.96,000/-, the latter being blocked credit under Section 17(5)(b)(i); (ii) proforma invoices/estimates Rs.7,56,000/- and delivery challans Rs.3,24,000/-, of which the latter represent tax that no supplier charged; and (iii) invoices of M/s AAA Systems Pvt. Ltd. GSTIN Rs.6,78,000/-;

8. AND WHEREAS the electronic credit ledger shows that the ITC of April to December 2025 (Rs.17,04,000) was utilised in the same return on the due dates shown in Annexure-B, so that interest under Section 50(3) read with Rule 88B(3) at 24% runs on it, while the ITC of January 2026 (Rs.3,60,000/-) lay unutilised in a ledger balance of Rs.9,40,000/- and attracts no interest unless found to be utilised (RUD-7);

9. AND WHEREAS the default is by reason of careless accounting practice and not of fraud, wilful misstatement or suppression of facts, the goods and services having been received, the vendors paid, and the documents produced on summons, so that the penalty proposed is under Section 74A(5)(i) and not Section 74A(5)(ii);

10. AND WHEREAS it thus appears that the Noticee has contravened Sections 16(1), 16(2)(a), 16(2)(aa) and 17(5)(b)(i) and Section 41(1) of the CGST Act, 2017, and Rule 36(1), (2) and (4) of the CGST Rules, 2017 (and the corresponding provisions of the KGST Act, 2017), and has rendered itself liable to demand under Section 74A(1), interest under Section 50(3) and penalty under Section 74A(5)(i) of the said Acts;

NOW, THEREFORE

M/s XXX Engineering Solutions Pvt. Ltd., Whitefield, Bengaluru, Karnataka, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of Central Tax, Division - [•], Bengaluru West CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.20,64,000/- (Rs.10,32,000/- central tax and Rs.10,32,000/- Karnataka State tax) taken in FORM GSTR-3B for April 2025 to January 2026 on proforma invoices, estimates and delivery challans, on documents in the names of employees without the GSTIN of the company, on restaurant bills and on invoices bearing the GSTIN of another person, as detailed in Annexure-A, should not be held to be ITC wrongly availed in contravention of Sections 16(1), 16(2)(a) and 16(2)(aa) read with Rule 36(1), (2) and (4) and, in respect of the restaurant bills, Section 17(5)(b)(i) of the CGST Act, 2017/KGST Act, 2017;

(ii) the said amount of Rs.20,64,000/- should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the KGST Act, 2017 (the ITC of Rs.5,79,000/- on documents since regularised having been excluded from the demand);

(iii) interest under Section 50(3) read with Rule 88B(3) at 24% per annum on the wrongly availed and utilised ITC of Rs.17,04,000, from the dates of utilisation shown in Annexure-B till the date of payment (Rs.4,84,040 up to 30.11.2026), should not be demanded and recovered from them, and why the same interest should not be recovered on the ITC of January 2026 (Rs.3,60,000/-) if it is found to have been utilised;

(iv) a penalty of Rs.1,03,200 (Central tax) and Rs.1,03,200 (Karnataka State tax), total Rs.2,06,400/-, being 10% of the tax, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)); and

(v) the unutilised balance of wrongly availed ITC lying in the electronic credit ledger should not be ordered to be reversed/recovered, and the said ledger balance should not be blocked under Rule 86A until the demand is paid.

11. The Noticee is further informed that:

- a written reply along with all documents relied upon must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of the available records;
- a personal hearing will be granted before adjudication on a date to be intimated, and the Noticee may appear in person or through an authorised representative;
- attention is drawn to Section 74A(8) of the CGST Act, 2017/KGST Act, 2017: on payment of the tax and

interest within sixty days of this notice, no penalty is payable and the proceedings in respect of the notice are concluded;

- the Noticee may, before the order, produce tax invoices, re-issued invoices or other documents which cure any further item in Annexure-A, together with the FORM GSTR-2B showing them; such documents will be considered at adjudication subject to Section 16(4);
- this notice is issued without prejudice to any other action under the CGST Act, 2017/KGST Act, 2017 or any other law, and to a statement under Section 74A(3) for later periods.

List of Relied Upon Documents (RUDs):

RUD-1: Scrutiny report comparing FORM GSTR-3B and FORM GSTR-2B for April 2025 to January 2026;

RUD-2: Summons dated 02.03.2026 under Section 70 with proof of service;

RUD-3: Purchase register and ITC ledger of the Noticee for April 2025 to January 2026;

RUD-4: 38 hotel invoices, 14 air tickets and 61 restaurant bills produced on 09.03.2026;

RUD-5: 17 proforma invoices/estimates and six delivery challans produced on 09.03.2026;

RUD-6: 13 vendor invoices bearing the GSTIN of M/s AAA Systems Pvt. Ltd.; and the employee travel policy;

RUD-7: Electronic credit ledger extract of the Noticee for April 2025 to March 2026 (balance as on 09.03.2026);

RUD-8: Statement of Mr. P recorded on 09.03.2026 under Section 70;

RUD-9 to RUD-12: Confirmations of the hotels and airlines, of the vendors and of M/s AAA Systems Pvt. Ltd. obtained under Section 70, and FORM GSTR-2B of the Noticee for September 2026;

RUD-13: Letter dated 20.03.2026 inviting the Noticee to regularise, and its replies;

Annexure-A: Category-wise statement of ITC claimed, regularised and demanded [as per the tables in Part B];

Annexure-B: Month-wise statement of ITC, dates of utilisation and interest [as per the table in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Bengaluru West CGST Commissionerate

Copy to: The Additional/Joint Commissioner, CGST Bengaluru West, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional division/officer, GSTIN, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. Mr. P, M/s XXX, M/s AAA Systems Pvt. Ltd. are fictional.*
- ***Teaching point.*** *The conditions of Section 16(2) are cumulative, and they are a matter of documentary evidence: the recipient must hold a document of the kind listed in Rule 36(1), which carries its own GSTIN and the tax charged, and which the supplier has reported. A defect in the document is a defect in eligibility even where the goods were received and the vendor paid. Compare Exercise-03 (suppliers do not exist; goods not received; fraud; Section 74A(5)(ii) and prosecution) and Exercise-07 (valid documents, but the ITC claimed exceeds the amount reflected in FORM GSTR-2B). The only issue here is whether the document is the right one, which is why the exercise sorts the credit into curable and non-curable categories.*
- ***Curable or not.*** *The notice does not rely on any circular for the employee-name bill. The position taken is from the bare text: Rule 36(1)(a) needs an invoice issued by the supplier, and the proviso to Rule 36(2) needs the recipient's GSTIN; once the hotel re-issues the invoice with the GSTIN and reports it, both are met and the credit reflects in FORM GSTR-2B within Section 16(4). A restaurant bill is blocked under Section 17(5)(b)(i) whatever the document says. Proforma invoices and delivery challans cannot be cured by the recipient; only the vendor's tax invoice can.* ***No interest on the cured portion*** *is a view for the*

proper officer: strictly, ITC taken before the conditions were met was wrongly availed during the gap; the exercise treats the cured portion as revenue-neutral and does not charge interest, but the officer may take a different view and a student may note it.

- ***Interest only on ITC availed and utilised.*** *Section 50(3) interest (with Rule 88B(3)) is charged from the date of utilisation, which the Explanation to Rule 88B fixes by reference to the electronic credit ledger. The ITC of January 2026 lay unutilised in the ledger and is demanded but not charged interest. The unutilised balance can be blocked under Rule 86A.*
- ***Non-fraud route.*** *Section 74A(5)(i) (Rs.10,000/- or 10%, whichever is higher) applies because no suppression or intent is shown; the notice records the facts (credit taken openly from the books, documents produced on summons, goods received and paid for). The proforma/challan category and the wrong GSTIN category would turn into a fraud case only if there were evidence that no supply took place (see Exercise-03).*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018. Here the central tax involved is Rs.10,32,000/-, which is above Rs.10 lakh and below Rs.1 crore, so the notice is issued by the Deputy/Assistant Commissioner and not by the Superintendent (Exercises 02 and 52).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

***

Exercise 69

ITC taken on plant and machinery on which depreciation has also been claimed on the tax component under the Income-tax Act - Section 16(3)

Exercise 69: ITC taken on plant and machinery on which depreciation has also been claimed on the tax component under the Income-tax Act - Section 16(3)

Situation in Brief:

1. M/s XXX Polymers Pvt. Ltd. (hereinafter 'M/s XXX'), GIDC, Savli, Vadodara, Gujarat (GSTIN 24XXXXX0000X1Z7), manufactures plastic compounds and is a regular taxpayer making taxable outward supplies of about Rs.20 crore a month; its output tax liability exceeds the ITC available in every month, so that all ITC taken in the return is used for payment of output tax in that return. Mr. P is its Chief Financial Officer. The company is a company assessed under the Income-tax Act, 1961 and its accounts are subject to tax audit.

2. Between June 2024 and December 2025 M/s XXX bought six lots of plant and machinery (extrusion lines, a compounding unit and a chiller plant) from M/s AAA Machinery Pvt. Ltd., Pune, and other vendors in Gujarat. All six are intra-State supplies on proper tax invoices at 18% (9% CGST + 9% GGST), reflected in FORM GSTR-2B, and were put to use in the month of purchase. M/s XXX took the full ITC on each lot in FORM GSTR-3B for the month of the invoice (filed on the due date, the 20th of the next month), as follows:

Lot	Invoice date	Taxable value (Rs.)	ITC taken: CGST + GGST (Rs.)	GSTR-3B filed on	FY
T1	18.06.2024	4,00,00,000	72,00,000	20.07.2024	2024-25
T2	14.10.2024	2,50,00,000	45,00,000	20.11.2024	2024-25
T3	17.02.2025	3,00,00,000	54,00,000	20.03.2025	2024-25
T4	12.05.2025	5,00,00,000	90,00,000	20.06.2025	2025-26
T5	09.09.2025	3,50,00,000	63,00,000	20.10.2025	2025-26
T6	10.12.2025	2,00,00,000	36,00,000	20.01.2026	2025-26
TOTAL		**20,00,00,000**	**3,60,00,000**		

3. The Income-tax Department (Assistant Director of Income-tax, Investigation Wing, Ahmedabad) communicated to the CGST Commissionerate, Vadodara, by letter dated 16.10.2026, the Form 3CD tax audit reports of M/s XXX for FY 2024-25 (filed 29.09.2025) and FY 2025-26 (filed 28.09.2026) with the returns of income for AY 2025-26 (original filed 28.10.2025; revised filed 24.11.2025) and AY 2026-27 (filed 14.10.2026), and an extract of the fixed asset schedule, for cross-verification with GST returns. Clause 18 of Form 3CD for both years shows the additions to the block 'plant and machinery' at the **gross invoice value including GST** for lots T2 to T6, and the depreciation computed on the block as a whole.

4. A summons dated 19.10.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. P, who appeared on 22.10.2026 and produced (a) the fixed asset register as per the Companies Act, 2013 and the Income-tax block schedule, (b) the ledger accounts 'Plant and Machinery' and 'GST Input - Capital Goods', (c) copies of the Form 3CD, the original and revised returns of income and the computation for AY 2025-26 and 2026-27, and (d) the acknowledgement of the revised return of 24.11.2025 and the covering note of the tax consultant.

5. The statement of Mr. P was recorded on 22.10.2026 under Section 70, in which he stated, inter alia, that: (i) the vendor group 'Machinery - Capital' in the company's ERP is mapped to capitalise the invoice at the gross value, and the GST so capitalised was also booked by the GST team to the ITC ledger through the GSTR-2B upload, so that the same tax was both a cost and a credit; (ii) the depreciation under the Companies Act and under the Income-tax Act has been computed on the gross block from the fixed asset register; (iii) the statutory auditor's management letter for FY 2024-25 pointed out the double treatment only for the extrusion line of M/s AAA Machinery Pvt. Ltd. (lot T1), and on the advice of the tax consultant the company filed a revised return for AY 2025-26 on 24.11.2025 reducing the 'actual cost' of the block by Rs.72,00,000/-, the GST on lot T1; (iv) the same exercise was not done for

lots T2 and T3 because the consultant's review was confined to the auditor's observation; (v) lots T4 to T6 were again capitalised at the gross value in the books and in the return for AY 2026-27 filed on 14.10.2026, as the ERP mapping was not corrected; (vi) he did not know that Section 16(3) of the CGST Act barred the credit; and (vii) the company is willing to revise the return for AY 2026-27 for lots T4 to T6 and asks that the credit not be demanded on this basis.

6. Comparison of the Form 3CD, the fixed asset register and the electronic credit ledger gives the following position. The company has not given up any of the ITC and has not made any reversal under Rule 42/43 or otherwise:

Lot	ITC taken (Rs.)	GST in cost for depreciation?	Position in Income-tax returns
T1	72,00,000	Originally yes; withdrawn	Reduced by revised return 24.11.2025 (Rs.72,00,000/-)
T2	45,00,000	Yes (in 3CD cl. 18)	Included in cost; no revision
T3	54,00,000	Yes (in 3CD cl. 18)	Included in cost; no revision
T4	90,00,000	Yes (in 3CD cl. 18)	Included in cost (AY 2026-27); not revised
T5	63,00,000	Yes (in 3CD cl. 18)	Included in cost (AY 2026-27); not revised
T6	36,00,000	Yes (in 3CD cl. 18)	Included in cost (AY 2026-27); not revised

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions), deciding the demand, the limitation, the period, whether the case is one of fraud, and the effect of the revised return of income.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX to show cause as to why action should not be taken against it, while listing the proposed action to be taken against M/s XXX.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Information from the Income-tax Department, Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Polymers Pvt. Ltd., Vadodara CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provision stands contravened (in each case read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017 [GGST Act]):

1. **Section 16(3) of the CGST Act, 2017** - 'Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.' The provision creates an either/or choice: the tax component of the cost of a capital asset either earns ITC or is part of the depreciable cost for income-tax, but not both. The company has claimed ITC through FORM GSTR-3B and depreciation on the same tax component through the returns of income for lots T2 to T6.
2. **Section 16(1) read with Section 41(1) of the CGST Act, 2017** - the credit was not 'eligible ITC' when taken and used, because it is subject to the restriction in Section 16(3).

Note: *The plant and machinery is not blocked credit under Section 17(5)(c) or (d): 'plant and machinery' as defined in the Explanation to Section 17 is outside the scope of clause (d), and the lots are not works contract or immovable property. The only bar is Section 16(3). Section 16(2)(a)-(d) is satisfied (valid tax invoices, receipt, tax paid, returns filed), so this is not an offence under Section 16(2) and no question of non-existent suppliers arises.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contravention at (A) above exposes M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the GGST Act, 2017):

1. Route and periods - the credit was taken in FY 2024-25 and FY 2025-26, to both of which **Section 74A** applies (it applies from FY 2024-25); Section 73/74 do not arise. Section 74A(1) allows a notice where ITC has been wrongly availed or utilised. The notice may be issued up to 42 months from the due date of the annual return: for FY 2024-25 the due date was 31.12.2025, so up to 30.06.2029; for FY 2025-26 it is 31.12.2026, so up to 30.06.2030 [Section 74A(2)]; the order is to be passed within twelve months from the notice, extendable by six months [Section 74A(7)]. The notice is issued under Section 74A(1) for FY 2024-25 (the earlier year), and the statement for FY 2025-26 is served under Section 74A(3) and, being on the same grounds, is deemed to be a notice under Section 74A(4). Both periods are well within time.
2. What is demanded - the ITC on the 'said tax component', i.e. the whole tax on each lot on which depreciation was claimed on the tax component, and not merely a proportion based on the depreciation claimed. The test under Section 16(3) is whether the depreciation has been claimed on the tax component, not how much; therefore lots T2 to T6 are in the demand in full (Rs.2,88,00,000; central tax Rs.1,44,00,000, Gujarat State tax Rs.1,44,00,000).
3. Lot T1 - the revised return - the company filed a revised return for AY 2025-26 on 24.11.2025, before any contact from either Department, which excluded the GST of Rs.72,00,000/- from the actual cost. Section 16(3) bars the credit only where depreciation has been claimed, and a revised return replaces the original return; there is no longer a claim of depreciation on the tax component of lot T1. The company has thus made its election for T1 in favour of ITC. No demand and no interest are proposed for lot T1; it is excluded from the notice subject to the revised return being verified with the Income-tax Department (acknowledgement, computation, and that it has been given effect in the WDV of the block).
4. Is a revised return an acceptable cure for T2 to T6? - the position taken is: (a) A genuine and complete withdrawal of the depreciation claim on the tax component by the Income-tax return process restores the election in favour of ITC and, on that footing, the ITC on that lot cannot be demanded; there is nothing in Section 16(3) that makes the choice irrevocable. (b) But the withdrawal must be real and complete: it must cover the whole tax component, reach all years in which the depreciation was

claimed on it (including the cumulative effect on the WDV of the block), be reflected in the Income-tax record, and tally with Form 3CD clause 18 and the fixed asset register. A promise to revise, as in the statement of Mr. P, is not a cure; the demand stands until it is done. A 'partial reversal' as in T1 cures only what it reverses. (c) Whether and by what mechanism the Income-tax law permits such a correction for a year for which the time for a revised return has passed is a matter for the Income-tax law and the authorities under that law; the GST officer neither decides it nor relies on any view on it. (d) The alternative cure is the opposite election: reversal of the ITC (FORM GST DRC-03 or by debit to the electronic credit ledger) with interest; the tax then becomes part of the cost of the asset, and the depreciation is not objectionable under Section 16(3).

5. ITC already utilised - the credit was utilised for payment of output tax in the month it was taken. If the company reverses it, it must pay the amount as ITC wrongly availed and utilised, with interest, by debit of any balance in the electronic credit ledger or in cash (FORM GST DRC-03); the output tax already discharged through the credit stays discharged, because the reversal restores the credit to the Government. If it elects to withdraw the depreciation instead, no reversal is needed after the withdrawal is verified. In either case, interest is dealt with below.

6. Interest - **Section 50(3) read with Rule 88B(3)** at 24% on ITC wrongly availed and utilised, from the date of utilisation (the due date of FORM GSTR-3B, when filed on or before it), under the Explanation to Rule 88B, as the electronic credit ledger balance fell below the wrongly availed amount on each filing. The ITC was utilised on the dates shown below; interest to 30.11.2026 is Rs.99,40,735 (Rs.49,70,367 under the CGST Act and Rs.49,70,368 under the GGST Act). If the company withdraws the depreciation after the notice, interest up to the date of the revised return remains payable in the view taken here, because the credit was used while the bar operated; for T1, where the election was made before any enquiry, none is charged.

Lot	ITC utilised on	ITC (Rs.)	Days to 30.11.2026	Interest @24% (Rs.)
T2	20.11.2024	45,00,000	740	21,89,589
T3	20.03.2025	54,00,000	620	22,01,425
T4	20.06.2025	90,00,000	528	31,24,603
T5	20.10.2025	63,00,000	406	16,81,841
T6	20.01.2026	36,00,000	314	7,43,277
TOTAL		**2,88,00,000**		**99,40,735**

7. Fraud or non-fraud - the penalty proposed is under **Section 74A(5)(i)**: 10% of the tax or Rs.10,000/-, whichever is higher. The ITC and the depreciation were both disclosed in documents available to the Department (the GST returns and the Form 3CD, which itself shows the gross cost); the cause is an ERP mapping that capitalises GST, and the company itself withdrew the claim for T1 before any enquiry; the 'suppression' of Explanation 2 to Section 74A (not declaring facts required to be declared in a return or other document, or not furnishing information called for in writing) is not shown, and nothing in the GST return is shown to call for a declaration about depreciation under the Income-tax Act. The company's continuance of the same practice for T4 to T6 after the revised return of 24.11.2025 shows poor internal control and not, by itself, a deliberate intent to evade; a case under Section 74A(5)(ii) would need evidence of a deliberate choice (for instance a board note or an internal e-mail recommending that both be taken). Penalty: Rs.9,90,000 for FY 2024-25 and Rs.18,90,000 for FY 2025-26, total Rs.28,80,000/- (Rs.14,40,000/- each under the CGST and GGST Acts). On payment of tax and interest within 60 days of the notice there is no penalty [Section 74A(8)].

8. Coordination with the Income-tax Department and evidence - the lead has come from the Income-tax Department. Section 158 of the CGST Act is the confidentiality provision for particulars in returns, statements and documents produced and in the records of evidence under the Act: they are not to be disclosed except as provided in Section 158(3), which lists the permitted disclosures (including to officers of the Central or State Government for levying or realising tax or duty). The CGST officer's own use of the information received from the Income-tax Department is not a disclosure under Section 158; but the authority of the Income-tax Department to supply it lies in the Income-tax Act, 1961 and the

arrangements between the Departments, and the officer should record the letter and the source of authority on the file. The notice does not rest on that letter alone: the allegation is proved from documents the company itself produced on summons (the Form 3CD, the revised return and the fixed asset register) and the statement of Mr. P under Section 70, with the GSTR-3B and the ledger from the GST records.

9. Specific offence penalties - none is proposed other than Section 74A(5)(i); Section 122(1)(vii) is not attracted (the goods were received) and Section 125 is not needed as the Act provides the penalty (Section 75(13), Section 126).

10. Recovery - Sections 78 and 79; provisional attachment under Section 83 is not considered at this stage, as no risk to the revenue is shown.

11. Prosecution - not proposed. The clauses of Section 132(1) that deal with ITC (clauses (b) and (c)) require an invoice without supply or availing credit without an invoice; here the invoices are genuine and the goods were received, and there is no evidence of intent. The amount (Rs.2,88,00,000) would otherwise fall in the Rs.2 crore to Rs.5 crore tier of Template XI.

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Polymers Pvt. Ltd., GIDC, Savli, Vadodara, Gujarat, is hereby called upon to show cause in writing to the Additional/Joint Commissioner of Central Tax, Vadodara CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.2,88,00,000 (Rs.1,44,00,000 central tax and Rs.1,44,00,000 Gujarat State tax) taken on the tax component of the cost of plant and machinery (lots T2 to T6) on which depreciation has also been claimed under the Income-tax Act, 1961, as detailed in Annexure-A, should not be disallowed under Section 16(3) of the CGST Act, 2017/GGST Act, 2017 and held to be ITC wrongly availed and utilised;

(ii) the said amount should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017, being Rs.99,00,000 for FY 2024-25 (lots T2 and T3) under this notice and Rs.1,89,00,000 for FY 2025-26 (lots T4 to T6) under the statement served under Section 74A(3) of the Act and deemed a notice under Section 74A(4);

(iii) interest under Section 50(3) read with Rule 88B(3) at 24% per annum on the said amount from the dates of utilisation shown in Annexure-B till the date of payment (Rs.99,40,735 up to 30.11.2026) should not be demanded and recovered from them; and

(iv) a penalty of Rs.14,40,000 (Central tax) and Rs.14,40,000 (Gujarat State tax), total Rs.28,80,000/-, being 10% of the tax, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-VADODARA

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Additional/Joint Commissioner, CGST, Vadodara CGST Commissionerate, Gujarat

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Gujarat Goods and Services Tax Act, 2017)

To,
M/s XXX Polymers Pvt. Ltd.,
(GSTIN 24XXXXX0000X1Z7), GIDC, Savli, Vadodara, Gujarat.

(hereinafter referred to as 'the Noticee')

WHEREAS the Noticee bought six lots of plant and machinery (lots T1 to T6) between June 2024 and December 2025 on tax invoices at 18% and took input tax credit (ITC) of Rs.3,60,00,000 in all on them in FORM GSTR-3B for the months of the invoices, as shown in Annexure-A (RUD-1);

2. AND WHEREAS the Income-tax Department, by letter dated 16.10.2026, communicated the Form 3CD tax audit reports of the Noticee for FY 2024-25 and FY 2025-26 and the returns of income for AY 2025-26 and AY 2026-27 (RUD-2). A summons dated 19.10.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. P, Chief Financial Officer of the Noticee (RUD-3), who appeared on 22.10.2026 and produced the fixed asset register and block schedule, the ledgers, the Form 3CD, the original and revised returns of income and the acknowledgement of the revised return of 24.11.2025 (RUD-4 to RUD-7);

3. AND WHEREAS clause 18 of Form 3CD for both years (RUD-5) shows that the additions to the block 'plant and machinery' for lots T2 to T6 are at the gross invoice value including GST, and depreciation has been claimed on the block, i.e. on the tax component of the cost of these capital goods, while the Noticee has also taken the ITC on the same tax;

4. AND WHEREAS in his statement recorded on 22.10.2026 (RUD-8) Mr. P admitted that the ERP of the Noticee capitalises such invoices at the gross value, that the same GST was booked as ITC; that the revised return for AY 2025-26 filed on 24.11.2025 reduced the actual cost only by the GST on lot T1 (Rs.72,00,000/-); that lots T2 and T3 were not revised and that lots T4 to T6 were capitalised at the gross value in the return for AY 2026-27 filed on 14.10.2026; and that the Noticee has not reversed any ITC;

5. AND WHEREAS Section 16(3) of the CGST Act, 2017 provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed; and the ITC of Rs.2,88,00,000 on lots T2 to T6 appears to have been wrongly availed, and, having been used for payment of output tax in the same return, wrongly utilised, as shown in Annexure-B;

6. AND WHEREAS the revised return of income for AY 2025-26 filed on 24.11.2025 withdrew the depreciation on the tax component of lot T1, and no demand is made for lot T1 (ITC Rs.72,00,000), subject to verification;

7. AND WHEREAS the ITC and the depreciation appear in documents available to the Department, the Noticee has made no concealment and there is no evidence of intent to evade tax; the default therefore appears to be one for which penalty under Section 74A(5)(i) and not Section 74A(5)(ii) is attracted;

8. AND WHEREAS it thus appears that the Noticee has contravened Section 16(3), and Sections 16(1) and 41(1), of the CGST Act, 2017 (and the corresponding provisions of the GGST Act, 2017) and has rendered itself liable to demand under Section 74A(1), interest under Section 50(3) read with Rule

88B(3) and penalty under Section 74A(5)(i);

NOW, THEREFORE

M/s XXX Polymers Pvt. Ltd., GIDC, Savli, Vadodara, Gujarat, is hereby called upon to show cause in writing to the Additional/Joint Commissioner of Central Tax, Vadodara CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.2,88,00,000 (Rs.1,44,00,000 central tax and Rs.1,44,00,000 Gujarat State tax) taken on the tax component of the cost of plant and machinery (lots T2 to T6) on which depreciation has also been claimed under the Income-tax Act, 1961, as detailed in Annexure-A, should not be disallowed under Section 16(3) of the CGST Act, 2017/GGST Act, 2017 and held to be ITC wrongly availed and utilised;

(ii) the said amount should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the GGST Act, 2017, being Rs.99,00,000 for FY 2024-25 (lots T2 and T3) under this notice and Rs.1,89,00,000 for FY 2025-26 (lots T4 to T6) under the statement served under Section 74A(3) of the Act and deemed a notice under Section 74A(4);

(iii) interest under Section 50(3) read with Rule 88B(3) at 24% per annum on the said amount from the dates of utilisation shown in Annexure-B till the date of payment (Rs.99,40,735 up to 30.11.2026) should not be demanded and recovered from them; and

(iv) a penalty of Rs.14,40,000 (Central tax) and Rs.14,40,000 (Gujarat State tax), total Rs.28,80,000/-, being 10% of the tax, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/GGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

9. The Noticee is further informed that:

- a written reply along with all documents relied upon must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of the available records;
- a personal hearing will be granted before adjudication, on a date to be intimated, and the Noticee may appear in person or through an authorised representative;
- the Noticee may elect, for any lot, either to reverse the ITC with interest or to withdraw the depreciation claimed on the tax component by a return of income accepted under the Income-tax Act and to furnish the acknowledgement, computation and block schedule so revised, along with a reconciliation with Form 3CD clause 18; such documents will be considered at adjudication;
- attention is drawn to Section 74A(8): on payment of the tax and interest within sixty days of this notice no penalty is payable and the proceedings are concluded;
- this notice is issued without prejudice to any other action under the CGST Act, 2017/GGST Act, 2017 or any other law.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GSTR-3B (June 2024 to December 2025) and FORM GSTR-2B of the Noticee, and the electronic credit ledger;

RUD-2: Letter dated 16.10.2026 of the Assistant Director of Income-tax (Investigation), Ahmedabad, with enclosures;

RUD-3: Summons dated 19.10.2026 under Section 70 with proof of service;

RUD-4: Fixed asset register and Income-tax block schedule produced on 22.10.2026;

RUD-5: Form 3CD for FY 2024-25 and FY 2025-26 (clause 18) produced by the Noticee;

RUD-6: Original and revised returns of income and computation for AY 2025-26, and the return for AY 2026-27;

RUD-7: Ledgers 'Plant and Machinery' and 'GST Input - Capital Goods'; acknowledgement of the revised

return dated 24.11.2025 and the covering note of the tax consultant;

RUD-8: Statement of Mr. P recorded on 22.10.2026 under Section 70;

Annexure-A: Lot-wise statement of ITC and treatment of the tax component [as per the tables in the Situation];

Annexure-B: Statement of dates of utilisation and interest [as per the table in Part B].

(_____)
Additional/Joint Commissioner, CGST
Vadodara CGST Commissionerate

Copy to: The Principal Commissioner, CGST Vadodara, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional office, GSTIN, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. M/s XXX, M/s AAA Machinery and Mr. P are fictional. Dates differ from the usual FY 2025-26 pattern because the Form 3CD and the return of income for FY 2025-26 could not exist before September-October 2026.*
- ***Teaching point.** Section 16(3) is an either/or choice: the tax component of the cost of a capital asset can earn ITC or depreciation under the Income-tax Act, never both. The evidence of the claim is in the other statute's returns (Form 3CD clause 18, the block schedule), which is why the lead came from the Income-tax Department and why the notice rests on documents produced on summons. Compare Exercise-43 (ITC availed twice on the same invoice, a GST-internal duplication) and Exercise-44 (Section 18(6) on the sale of used capital goods). The demand is of the whole tax component, not a share proportionate to the depreciation.*
- ***Cure.** A revised return of income that completely withdraws the depreciation on the tax component restores the election in favour of ITC; a partial reversal (as for lot T1) cures only what it reverses, and a promise to revise is no cure. The notice records no view on the Income-tax Act mechanism for revising a year that is closed; that is for the Income-tax authorities. The notice invites the election between reversing the ITC with interest and withdrawing the depreciation.*
- ***Interest after cure.** No interest is charged on T1, because the election was made before any enquiry; the proposed view for a cure after the notice is that interest up to the date of the revised return remains payable because the credit was used while the bar operated. That is a view for the adjudicating officer, not a settled proposition.*
- ***Fraud or non-fraud.** Section 74A(5)(i) is proposed. The company disclosed both claims in its own documents, and corrected T1 on its own. The knowledge that came with the revised return of 24.11.2025 and the repetition of the practice for T4 to T6 raise a doubt, but without a deliberate choice shown by evidence they prove carelessness and not suppression; the officer should not allege fraud merely from repetition. Compare Exercise-49 and Exercise-52 where specific evidence of concealment was available.*
- ***Section 158.** The section is the GST confidentiality provision. It does not itself authorise the Income-tax Department to give information to the CGST officer; the source of that authority is in the Income-tax Act and in the arrangements between the Departments, which the officer should identify on the file. Whatever the lead, the notice must stand on documents produced by the noticee and statements recorded under Section 70.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018. Here the central tax involved is Rs.1,44,00,000, which is above Rs.1 crore, so the notice is issued by the Additional/Joint Commissioner and not by the Superintendent or Deputy/Assistant Commissioner (Exercises 02 and 49).*

- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 70

Full input tax credit taken by a non-banking financial company that exercised the 50% option - Section 17(4), Rule 38 and Section 17(2)

Exercise 70: Full input tax credit taken by a non-banking financial company that exercised the 50% option - Section 17(4), Rule 38 and Section 17(2)

Situation in Brief:

1. M/s XXX Finance Ltd. (hereinafter 'M/s XXX'), Thrissur, Kerala (GSTIN 32XXXXX0000X1Z9), is a non-banking financial company (NBFC) registered with the Reserve Bank of India, engaged in extending loans and advances (gold loans and loans against property) and does not accept public deposits. For FY 2025-26 (up to December 2025, the period covered below) almost all of its income is interest on loans, which is exempt from GST; its only taxable income is processing fee and documentation charges. Mr. P is its Chief Financial Officer. M/s XXX has a head office at Mumbai registered separately under the same PAN, which supplies it shared IT and back-office services against a monthly cost recharge on tax invoices.

2. In its FORM GSTR-3B for April to December 2025, M/s XXX took ITC on office rent, software licences and subscriptions, security and facility services (together 'inputs and input services') and on capital goods (servers, computers and ATM-style kiosks). In April, May and June 2025 it reversed 50% of the ITC on inputs, input services and capital goods in FORM GSTR-3B each month as 'ITC reversed - as per Rule 38 / Section 17(4)'. From July 2025 it claimed 100% of the credit and reversed nothing. It never filed anything to say it would follow Section 17(2) and Rules 42/43, and made no reversal under those rules.

3. A departmental audit under Section 65 of the CGST Act, 2017 of M/s XXX for FY 2025-26 was commenced by the audit party from the Thrissur Commissionerate, with an audit intimation dated 05.02.2026, and the following facts emerged from the records produced (the ITC ledger, the GSTR-3B work papers, the draft financial statements and the Board's minute book). The audit team issued an audit memo on 28.02.2026, and the Chief Financial Officer's reply of 09.03.2026 was recorded; as the facts needed verification, a summons dated 11.03.2026 under Section 70 was then issued to Mr. P, who gave his statement on 17.03.2026.

4. Mr. P stated, inter alia, that (i) the company is an NBFC extending loans and advances; (ii) the income for the period April to December 2025 was interest on loans of Rs.214.00 crore and processing and documentation fees of Rs.9.00 crore (output tax of Rs.1.62 crore at 18%, paid partly out of ITC); (iii) the Board resolved on 26.03.2025 (resolution produced) that the company would avail ITC 'as per the 50% option of Section 17(4) for FY 2025-26'; (iv) the 50% reversal was made in April to June 2025 by the accounts team manually; (v) from July 2025, with a new accounting software release, the reversal mapping was not carried over and 100% ITC was auto-populated in FORM GSTR-3B; this was not noticed because the output tax liability exceeded the ITC in each month; (vi) the intra-PAN recharge from the Mumbai head office was claimed in full in all months; (vii) in September 2025 the company also took ITC of Rs.3,12,000/- on the annual club membership of its Managing Director; and (viii) no Rule 42/43 working has ever been prepared.

5. The month-wise ITC claimed in FORM GSTR-3B (the tax is central tax and Kerala State tax in equal halves, except the head office recharge, which is integrated tax) was as follows:

Month	Inputs and input services (Rs.)	Capital goods (Rs.)	Intra-PAN head office (Rs.)	Club membership (Rs.)	Total ITC claimed (Rs.)
April 2025	4,20,000	0	1,20,000	0	5,40,000
May 2025	4,56,000	1,80,000	1,20,000	0	7,56,000
June 2025	4,38,000	0	1,20,000	0	5,58,000
July 2025	4,62,000	5,40,000	1,20,000	0	11,22,000
August 2025	4,50,000	0	1,20,000	0	5,70,000
September 2025	4,74,000	3,60,000	1,20,000	3,12,000	12,66,000
October 2025	4,86,000	0	1,20,000	0	6,06,000
November 2025	4,92,000	2,40,000	1,20,000	0	8,52,000
December 2025	5,04,000	0	1,20,000	0	6,24,000

Month	Inputs and input services (Rs.)	Capital goods (Rs.)	Intra-PAN head office (Rs.)	Club membership (Rs.)	Total ITC claimed (Rs.)
TOTAL	41,82,000	13,20,000	10,80,000	3,12,000	68,94,000

6. The reversal made in FORM GSTR-3B for the months of April, May and June 2025 was Rs.2,10,000/-, Rs.3,18,000/- and Rs.2,19,000/- respectively, being exactly 50% of the ITC on inputs, input services and capital goods (Rs.4,20,000/-, Rs.6,36,000/- and Rs.4,38,000/-); the intra-PAN credit was not reversed. For July to December 2025 nothing was reversed. In each month of July to December the output tax payable exceeded the ITC claimed, and the balance was paid in cash; the ITC was utilised in the return filed on the due date (the 20th of the next month). The noticee claims in its reply that its interest income is not taxable and therefore, as it supplies mainly exempt services, 'full credit cannot be an issue', and that if any reversal is required it should be on the basis of Rule 42 and not the 50% rule, or on whichever basis is lower.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions), deciding the correct ITC under Section 17(4) and under Section 17(2), and which option is to be applied to quantify the excess.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX to show cause as to why action should not be taken against it, while listing the proposed action to be taken against M/s XXX.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Audit, Inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Finance Ltd., Kochi CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions stand contravened (in each case read with the corresponding provisions of the Kerala Goods and Services Tax Act, 2017 [KGST Act] and the Rules made under the two Acts):

1. **Section 17(4) of the CGST Act, 2017 read with Rule 38** - a banking company or a financial institution, including a non-banking financial company, engaged in providing services by way of accepting deposits or extending loans or advances has the option either to comply with Section 17(2) or to avail, every month, an amount equal to 50% of the eligible ITC on inputs, capital goods and input services in that month, and the rest shall lapse. By the first proviso, the option once exercised shall not be withdrawn during the remaining part of the financial year; by the second proviso, the 50% restriction does not apply to tax paid on supplies by one registered person to another having the same PAN. Rule 38 gives the procedure for a company that chooses not to comply with Section 17(2): it does not take credit on inputs and input services used for non-business purposes or attributable to Section 17(5) supplies; it takes credit in full on the supplies covered by the second proviso (not already excluded); of the remaining ITC, 50% is the credit admissible and the balance is reversed in FORM GSTR-3B. M/s XXX claimed 100% of the credit from July 2025.
2. **Section 16(1) and Section 41(1) of the CGST Act, 2017** - the credit taken over and above what Section 17(4) and Rule 38 allow was not 'eligible ITC' and was not entitled to be taken.
3. **Section 17(5)(b)(ii) of the CGST Act, 2017 and Rule 38** - ITC on membership of a club is blocked and, as the Rule says, no part of it is admissible in any manner (the 50% option does not make it eligible). The credit of Rs.3,12,000/- for September 2025 is wrongly availed in full.

Note: *The company has not exercised Section 17(2) at all: it never made a reversal under Rules 42 and 43. It is the 50% option that its Board resolved to follow and that it actually followed in April to June 2025, and which, by the first proviso, it could not withdraw in the course of FY 2025-26. Whether a co-operative bank is a 'banking company' or a 'financial institution' for Section 17(4) is not a question here, as the noticee is an NBFC, which Section 17(4) names; the term is not defined for this purpose in the sections consulted for this exercise, and the status of co-operative banks should be checked before a notice is issued to one.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the KGST Act, 2017):

1. Route - the credit is 'wrongly availed' and is recoverable under **Section 74A(1)** (FY 2025-26 comes within Section 74A). The notice may be issued up to 42 months from the due date of the annual return for FY 2025-26 (31.12.2026), i.e. up to 30.06.2030 [Section 74A(2)], and the order is to be passed within twelve months of the notice, extendable by six months [Section 74A(7)]. The period of this notice is July to December 2025; the months of January to March 2026 will be taken up by a statement under Section 74A(3), once the audit of those months is complete.
2. Interest on the loan - an exempt service - interest on loans and advances is an exempt supply: Notification No. 12/2017-Central Tax (Rate), Sl. No. 27, exempts services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services). The processing fees are taxable at 18%. This is the position that causes the credit to be common to taxable and exempt supplies and brings Section 17(2) and Section 17(4) into play.
3. Which option applies? - the option is the taxpayer's, and not the Department's, and it is applied for the whole financial year (first proviso to Section 17(4)). The facts show that M/s XXX exercised the 50% option for FY 2025-26: the Board resolution of 26.03.2025 and the 50% reversal made in April, May and

June 2025 under the heading of Rule 38 (no separate form is prescribed in Rule 38 for the exercise of the option; it is exercised by conduct, i.e. by the reversal in FORM GSTR-3B). The company cannot withdraw the option from July 2025; its plea of a 'lower of the two' basis is not available. The excess is therefore quantified on the 17(4)/Rule 38 basis. The noticee did not exercise Section 17(2).

4. Correct ITC under route (a), Section 17(4) and Rule 38 - for July to December 2025: inputs, input services and capital goods ITC of Rs.40,08,000, of which 50% (Rs.20,04,000) is admissible and the balance Rs.20,04,000 lapses; the intra-PAN credit is admissible in full under the second proviso; the credit on club membership (Rs.3,12,000) is not admissible at all. The ITC to be reversed is Rs.20,04,000 + Rs.3,12,000 = Rs.23,16,000 (CGST Rs.11,58,000 and KGST Rs.11,58,000). The capital goods ITC is dealt with on the same 50% in the month of receipt, there being no spreading over five years under Rule 43 for a company that follows Section 17(4).

Month	ITC on inputs, IS and CG (Rs.)	50% admissible (Rs.)	Club (Rs.)	ITC to be reversed (Rs.)	Days to 30.11.2026	Interest @24% (Rs.)
July 2025	10,02,000	5,01,000	0	5,01,000	467	1,53,841
August 2025	4,50,000	2,25,000	0	2,25,000	436	64,504
September 2025	8,34,000	4,17,000	3,12,000	7,29,000	406	1,94,613
October 2025	4,86,000	2,43,000	0	2,43,000	375	59,918
November 2025	7,32,000	3,66,000	0	3,66,000	345	83,027
December 2025	5,04,000	2,52,000	0	2,52,000	314	52,029
TOTAL (Jul.-Dec. 2025)	**40,08,000**	**20,04,000**	**3,12,000**	**23,16,000**		**6,07,932**

5. Correct ITC under route (b), Section 17(2) and Rules 42/43 (for comparison only) - the credit on the inputs, input services and capital goods is common credit, used for both the taxable processing fees and the exempt interest. For an NBFC the interest on loans is counted as exempt supply in the formula (the Explanation to Rule 43, as understood from secondary sources, excludes interest on deposits, loans and advances from the value of exempt supplies but not in the case of a banking company, financial institution or NBFC; its text must be checked). Exempt turnover (interest) of Rs.214.00 crore and total turnover of Rs.223.00 crore give an exempt ratio of 95.96%. On that basis, for July to December 2025, the credit on inputs and input services attributable to exempt supplies is Rs.27,52,251 and, on capital goods, the Rule 43 monthly slice (one-sixtieth of the credit for each month of use to December 2025) attributable to exempt supplies is Rs.82,529; the ITC admissible under route (b) is then about Rs.11,73,220 as against Rs.20,04,000 under the 50% route, and the reversal under route (b) would be about Rs.28,34,780. This is an illustrative working that ignores the other elements of the formulae (including the annual adjustment and the separate treatment of Section 17(5) credit); it shows only that route (b) is far less favourable to the noticee than route (a) for a company whose income is largely interest.

6. Why the demand is on the 50% basis - since the noticee has exercised the 50% option, the Department cannot assess it under route (b) merely because route (b) would yield a bigger demand; the notice does not give the noticee the benefit of route (b) either, because it is for the noticee to choose before the year (and the first proviso shuts the door in the middle of the year). The exposure on the 100% claim for July to December 2025 is therefore Rs.23,16,000 (Rs.20,04,000 lapsed credit + Rs.3,12,000 blocked credit).

7. Interest - **Section 50(3) read with Rule 88B(3)** at 24% on ITC wrongly availed and utilised, from the dates of utilisation, i.e. the dates of filing of FORM GSTR-3B, as shown in the table above (the Explanation to Rule 88B treats the credit as utilised when the ledger balance falls below the wrongly availed amount; here the ledger balance after set-off was nil in each month). Interest to 30.11.2026 is Rs.6,07,932 (Rs.3,03,966 under the CGST Act and Rs.3,03,966 under the KGST Act).

8. Penalty - **Section 74A(5)(i)** (10% of the tax or Rs.10,000/-, whichever is higher) is proposed: Rs.2,31,600 (Rs.1,15,800 each under the CGST and KGST Acts). The Board resolution, the reversal in April to June

2025 and the reply of the CFO show that the default of July to December 2025 was an error in the software mapping, not a plan to take more credit than allowed. The company disclosed the credit openly in FORM GSTR-3B. No fraud, wilful misstatement or suppression is shown, and the notice does not allege any. The club membership credit is a mistake of the same kind, and Section 74A(5)(i) applies to it as well. If the tax and interest are paid within sixty days of the notice, no penalty is payable [Section 74A(8)].

9. Specific offence penalties and recovery - no specific penalty under Section 122(1) is attracted (the goods and services were received; the credit is wrongly availed in excess of the statutory limit), and Section 75(13) and Section 126 are respected. Sections 78 and 79 provide for recovery.

10. Prosecution - not proposed; there is no fraud, the amount is below the monetary limits of Template XI, and there is no invoice-based offence.

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Finance Ltd., Thrissur, Kerala, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of Central Tax, Division - [•], Thrissur Division, Kochi CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.23,16,000 (Rs.11,58,000 central tax and Rs.11,58,000 Kerala State tax) taken in FORM GSTR-3B for July to December 2025 in excess of 50% of the eligible ITC on inputs, input services and capital goods, and the credit of Rs.3,12,000 on club membership, as detailed in Annexure-A, should not be held to be ITC wrongly availed in contravention of Section 17(4) and Section 17(5)(b) of the CGST Act, 2017/KGST Act, 2017 read with Rule 38 of the CGST Rules, 2017, the noticee having exercised the option under Section 17(4) for FY 2025-26 and not being entitled to withdraw it during the year;

(ii) the said amount should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the KGST Act, 2017;

(iii) interest under Section 50(3) read with Rule 88B(3) at 24% per annum on the said amount from the dates of utilisation shown in Annexure-A till the date of payment (Rs.6,07,932 up to 30.11.2026) should not be demanded and recovered from them; and

(iv) a penalty of Rs.1,15,800 (Central tax) and Rs.1,15,800 (Kerala State tax), total Rs.2,31,600/-, being 10% of the tax, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-KOCHI

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Kochi CGST Commissionerate, Kerala

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Kerala Goods and Services Tax Act, 2017)

To,
M/s XXX Finance Ltd.,
(GSTIN 32XXXXX0000X1Z9), Thrissur, Kerala.

(hereinafter referred to as 'the Noticee')

WHEREAS the Noticee is a non-banking financial company registered with the Reserve Bank of India, engaged in extending loans and advances, whose income for April to December 2025 comprised interest on loans of Rs.214.00 crore, which is exempt (Sl. No. 27 of Notification No. 12/2017-Central Tax (Rate)), and processing and documentation fees of Rs.9.00 crore, which are taxable (RUD-1);

2. AND WHEREAS an audit of the Noticee under Section 65 of the CGST Act, 2017 for FY 2025-26 was commenced on intimation dated 05.02.2026 (RUD-2), and the ITC ledger, the FORM GSTR-3B work papers and the Board's minute book were examined (RUD-3 to RUD-5). A summons dated 11.03.2026 under Section 70 was issued to Mr. P, Chief Financial Officer (RUD-6), who gave his statement on 17.03.2026 (RUD-7);

3. AND WHEREAS Mr. P stated that the Board resolved on 26.03.2025 (RUD-4) that the company would avail ITC under the 50% option of Section 17(4) for FY 2025-26; that the 50% reversal was made manually in April, May and June 2025; that from July 2025 the reversal mapping was not carried over to the new software release and 100% of the ITC was auto-populated in FORM GSTR-3B; that the intra-PAN head office recharge was claimed in full; and that ITC of Rs.3,12,000/- was taken in September 2025 on the club membership of the Managing Director; and he stated that no working under Rules 42 and 43 had ever been prepared;

4. AND WHEREAS the ITC ledger and FORM GSTR-3B (RUD-3, RUD-5) show that, for July to December 2025, the Noticee claimed ITC of Rs.40,08,000 on inputs, input services and capital goods and reversed nothing, whereas, in April to June 2025, it had reversed 50% of such ITC as per Rule 38 / Section 17(4);

5. AND WHEREAS Section 17(4) of the CGST Act, 2017 provides that a banking company or a financial institution, including a non-banking financial company, engaged in providing services by way of accepting deposits or extending loans or advances shall have the option either to comply with Section 17(2) or to avail, every month, an amount equal to 50% of the eligible ITC on inputs, capital goods and input services in that month, and the rest shall lapse, and that the option once exercised shall not be withdrawn during the remaining part of the financial year; and Rule 38 prescribes the procedure, under which credit on supplies attributable to Section 17(5) is not available and 50% of the remaining credit is admissible, the balance being reversed in FORM GSTR-3B;

6. AND WHEREAS it appears that the Noticee exercised the option under Section 17(4) for FY 2025-26 by the Board resolution of 26.03.2025 and by the reversal for April to June 2025, and could not withdraw it from July 2025; that it was entitled to ITC of Rs.20,04,000 (50%) on inputs, input services and capital goods for July to December 2025 and to full credit on the intra-PAN supplies (second proviso to Section 17(4)) and none on the club membership; and that it has taken excess credit of Rs.23,16,000 (Rs.20,04,000 + Rs.3,12,000), month-wise as in Annexure-A;

7. AND WHEREAS the ledger shows that the output tax payable exceeded the ITC in each month, so that the ITC was utilised on the date of filing of FORM GSTR-3B (the 20th of the next month), and interest at

24% under Section 50(3) read with Rule 88B(3) is chargeable on it (Annexure-A);

8. AND WHEREAS the default appears to be due to a failure of software mapping and not to any intent to evade, the Noticee having reversed the credit correctly for three months and disclosed the credit in its return, so that penalty under Section 74A(5)(i) and not Section 74A(5)(ii) is proposed;

9. AND WHEREAS it thus appears that the Noticee has contravened Sections 17(4), 17(5)(b), 16(1) and 41(1) of the CGST Act, 2017 and Rule 38 of the CGST Rules, 2017 (and the corresponding provisions of the KGST Act, 2017), and has rendered itself liable to demand under Section 74A(1), interest under Section 50(3) and penalty under Section 74A(5)(i);

NOW, THEREFORE

M/s XXX Finance Ltd., Thrissur, Kerala, is hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of Central Tax, Division - [•], Kochi CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.23,16,000 (Rs.11,58,000 central tax and Rs.11,58,000 Kerala State tax) taken in FORM GSTR-3B for July to December 2025 in excess of 50% of the eligible ITC on inputs, input services and capital goods, and the credit of Rs.3,12,000 on club membership, as detailed in Annexure-A, should not be held to be ITC wrongly availed in contravention of Section 17(4) and Section 17(5)(b) of the CGST Act, 2017/KGST Act, 2017 read with Rule 38 of the CGST Rules, 2017, the noticee having exercised the option under Section 17(4) for FY 2025-26 and not being entitled to withdraw it during the year;

(ii) the said amount should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the KGST Act, 2017;

(iii) interest under Section 50(3) read with Rule 88B(3) at 24% per annum on the said amount from the dates of utilisation shown in Annexure-A till the date of payment (Rs.6,07,932 up to 30.11.2026) should not be demanded and recovered from them; and

(iv) a penalty of Rs.1,15,800 (Central tax) and Rs.1,15,800 (Kerala State tax), total Rs.2,31,600/-, being 10% of the tax, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/KGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

10. The Noticee is further informed that:

- a written reply along with all documents relied upon must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of the available records;
- a personal hearing will be granted before adjudication on a date to be intimated, and the Noticee may appear in person or through an authorised representative;
- attention is drawn to Section 74A(8): on payment of the tax and interest within sixty days of this notice no penalty is payable and the proceedings are concluded;
- a statement under Section 74A(3) may be served for the months of January to March 2026 and for later periods, and this notice is issued without prejudice to any other action under the CGST Act, 2017/KGST Act, 2017.

List of Relied Upon Documents (RUDs):

RUD-1: Certificate of registration with the RBI as an NBFC, and draft financial statements for April to December 2025;

RUD-2: Audit intimation dated 05.02.2026 and audit memo dated 28.02.2026, with reply dated 09.03.2026;

RUD-3: ITC ledger and purchase register of the Noticee for April to December 2025;

RUD-4: Minute book containing the Board resolution dated 26.03.2025;

RUD-5: FORM GSTR-3B for April to December 2025 and the electronic credit ledger;

RUD-6: Summons dated 11.03.2026 under Section 70 with proof of service;

RUD-7: Statement of Mr. P recorded on 17.03.2026 under Section 70;

Annexure-A: Month-wise statement of ITC claimed, ITC admissible, excess and interest [as per the table in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Kochi CGST Commissionerate

Copy to: The Additional/Joint Commissioner, CGST Kochi, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional division/officer, GSTIN, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. M/s XXX Finance Ltd. and Mr. P are fictional; the turnover figures are illustrative.*
- ***Teaching point.** A bank, financial institution or NBFC has a special regime. It may either follow Section 17(2) (with Rules 42/43) or avail 50% of the eligible ITC every month under Section 17(4) and Rule 38, the rest lapsing; the option is a choice for the year and cannot be withdrawn during it. A claim of 100% is outside both. Compare Exercise-10, where an ordinary taxpayer with exempt supplies is assessed under Rules 42/43; here the first question is which option the noticee exercised, and only then the quantum. The exempt supply is interest on loans (Sl. No. 27 of Notification No. 12/2017-CT (Rate)), which for such a company also enters the Rule 42/43 formula, so that route (b) is less favourable than the 50% route.*
- ***Which option is applied.** Where the taxpayer's conduct (a Board resolution and the 50% reversals) shows the option exercised, the demand is the excess over 50% and not over the lower figure under Rules 42/43. The notice would be different if the noticee had never reversed anything and had no resolution: there the Department would have to decide whether the 50% rule (which it can offer as the more beneficial base) or Rules 42/43 is the proper base, a point that needs a considered view; the Rule 38 text sampled does not prescribe how or by what form the option is exercised.*
- ***Second proviso and blocked credit.** Credit on supplies between registered persons with the same PAN (the head office recharge) is outside the 50% restriction, and credit blocked by Section 17(5) is not admissible in any proportion. The two have to be separated from the common credit before the 50% is applied, which is why the table lists them in separate columns.*
- ***Fraud or non-fraud.** Section 74A(5)(i) is proposed: the Board resolution and the correct reversal for three months show that the default was a software slip. A fraud allegation would need evidence that the company deliberately switched to 100% credit.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018. Here the central tax involved is Rs.11,58,000, above Rs.10 lakh and below Rs.1 crore, so the notice is issued by the Deputy/Assistant Commissioner (Exercises 02 and 49).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 71

Non-payment of the amount equivalent to input tax credit on stock and capital goods on opting for the composition scheme - Section 18(4), Rule 44 and FORM GST ITC-03

Exercise 71: Non-payment of the amount equivalent to input tax credit on stock and capital goods on opting for the composition scheme - Section 18(4), Rule 44 and FORM GST ITC-03

Situation in Brief:

1. M/s XXX Industries, a partnership firm with its factory at YYYY, Focal Point, Ludhiana, Punjab (Managing Partner: Mr. Z), is a registered manufacturer of forged hand tools (spanners, pliers and hammers, HSN 8205). It was a regular taxpayer under the Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax Act, 2017 [PGST Act] from 2018 and filed FORM GSTR-3B every month up to March 2025. Its aggregate turnover in FY 2024-25 was Rs.1,38,40,000/-, all from intra-State supplies of goods made in Punjab. It does not supply goods through an e-commerce operator, does not manufacture any of the goods notified under Section 10(2)(e) and makes no supply of services.

2. On 14.03.2025 the firm filed FORM GST CMP-02 on the common portal, opting to pay tax under Section 10 (the composition scheme) from 01.04.2025. The option was accepted. The firm has since filed FORM GST CMP-08 for the quarters ended June, September and December 2025 and paid composition tax in cash. The firm has never filed FORM GST ITC-03; the portal shows no ITC-03 against its GSTIN. Eligibility for composition is not in dispute: the turnover of the preceding year was below Rs.1.5 crore and all supplies are intra-State.

3. During scrutiny of the returns of the firm for FY 2025-26 under Section 61, the proper officer noticed that (a) the firm had opted for composition from 01.04.2025 without filing ITC-03, (b) the FORM GSTR-3B for March 2025 (filed on 20.04.2025) shows credit availed on purchases up to 14.03.2025, and (c) the electronic credit ledger on 31.03.2025 showed an unutilised balance of Rs.6,00,000/- (Rs.3,00,000/- in the central tax column and Rs.3,00,000/- in the State tax column), which still stands in the ledger. A notice in FORM GST ASMT-10 dated 12.01.2026 was issued under Section 61 read with Rule 99. The reply dated 02.02.2026 stated that 'on opting for composition the input tax credit lapses and no ITC-03 is required', and did not furnish any stock details.

4. A summons dated 20.02.2026 under Section 70 was issued to Mr. Z to produce the stock register as on 31.03.2025, the purchase invoices, the bill of materials (BOM), the fixed asset register and the electronic credit ledger. He appeared on 06.03.2026 and produced all of them. In his statement recorded on 06.03.2026 under Section 70 he stated, inter alia, that the firm opted for composition on the advice of its chartered accountant, who left the firm's service in April 2025; that the accountant had told him that 'the old credit is gone once you go composition', and he had never been told about ITC-03; that the stock register as on 31.03.2025 is correct and is based on a physical count made by the firm on the evening of 31.03.2025; that all the capital goods listed in the fixed asset register are still in use in the factory; that no part of the credit was reversed or paid at any time; and that he is ready to pay the amount if it is found due. The invoices produced match the purchase register and the returns of the suppliers.

5. The stock register and the BOM were scrutinised with the invoices. The inputs held in stock on 31.03.2025, the semi-finished and finished goods held in stock on that date, and the capital goods in use on that date are as follows. The credit on each invoice is the credit availed in GSTR-3B (central tax and State tax in equal halves).

(a) Inputs in stock on 31.03.2025 - ITC proportionate to the corresponding invoices

Input	Invoice	ITC availed on invoice (Rs.)	Qty bought / in stock	ITC on stock (Rs.)
Steel billets (HSN 7207)	AAA/24-25/4521 dt 12.12.2024	1,62,000	50 / 20 MT	64,800
Alloy steel rods (HSN 7228)	BBB/0877 dt 03.02.2025	2,34,000	26 / 18 MT	1,62,000
Tool steel for dies (HSN 7224)	CCC/1190 dt 25.02.2025	90,000	5,000 / 3,000 kg	54,000
Heat-treatment oil and chemicals	DDD/2231 dt 20.09.2024	54,000	3,000 / 600 litre	10,800

Input	Invoice	ITC availed on invoice (Rs.)	Qty bought / in stock	ITC on stock (Rs.)
Corrugated cartons and packing	EEE/0314 dt 14.03.2025	36,000	12,000 / 9,000 nos	27,000
TOTAL (inputs in stock)		**5,76,000**		**3,18,600**

(b) Semi-finished and finished goods in stock on 31.03.2025 - ITC contained, as per the BOM and the invoice rates

Stock	Quantity	ITC contained per piece (Rs.)	ITC contained (Rs.)
Semi-finished forgings	6,500 pcs	14.00	91,000
Finished hand tools	10,000 pcs	21.60	2,16,000
TOTAL			**3,07,000**

(c) Capital goods in use on 31.03.2025 - ITC availed in full at the time of purchase

Capital goods	Invoice	ITC availed (Rs.)	Months used / remaining of 60	ITC attributable (Rs.)
CNC turning centre	FFF/2022-23/118 dt 15.07.2022	3,60,000	33 / 27	1,62,000
Hydraulic forging press	GGG/23-24/0452 dt 10.02.2024	2,70,000	14 / 46	2,07,000
Air compressor (screw type)	HHH/24-25/0987 dt 05.11.2024	54,000	5 / 55	49,500
TOTAL (capital goods)		**6,84,000**		**4,18,500**

6. The invoices of the three capital goods show that the firm took the full credit in the month of purchase. The firm has not claimed depreciation on the tax component under the Income-tax Act, 1961. The firm makes no exempt supply, and none of the inputs, semi-finished goods or finished goods in stock was purchased more than eighteen months before 31.03.2025.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Industries (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Industries (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Industries, calling upon M/s XXX Industries through its Managing Partner, Mr. Z, to show cause as to why action should not be taken against it, while listing the proposed action.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX Industries.

***

SUGGESTED SOLUTION

(Scrutiny, inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Industries, Ludhiana CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Punjab Goods and Services Tax Act, 2017 [PGST Act] and the Rules made under the two Acts):

1. **Section 18(4) of the CGST Act, 2017 read with Rule 44(1) and (2)** - a registered person who has availed input tax credit and who opts to pay tax under Section 10 is required to pay an amount, by way of debit in the electronic credit ledger or the electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock, and capital goods (the last reduced by the prescribed percentage points), on the day immediately preceding the date of exercising of the option, i.e. on 31.03.2025. The firm paid nothing.
2. **Rule 3(3) read with Rule 44(4) of the CGST Rules, 2017** - the registered person who opts for composition has to furnish the statement in FORM GST ITC-03 within sixty days from the commencement of the financial year for which the option is exercised, i.e. by 30.05.2025. The amount determined under Rule 44(1) 'shall form part of the output tax liability'. No ITC-03 was filed.
3. **Section 10(4) of the CGST Act, 2017** - a composition taxable person is not entitled to any credit of input tax. The ledger balance of Rs.6,00,000/- representing credit of input tax continues to stand in the ledger of a composition person. It is the reason for which Section 18(4) requires the stock credit to be paid back, and it lapses only after the payment is made (proviso to Section 18(4)).

Note: *Section 18(4) is not Section 29(5). Section 29(5) takes the same route under Rule 44 when the registration is cancelled (FORM GSTR-10), which is the subject of Exercise-45. Section 18(1)(c) is the reverse case: credit on stock is allowed when a composition person returns to the regular scheme. The 'higher of ITC or tax on transaction value' rule is in Section 18(6) (sale of capital goods, Exercise-44) and has no place in Section 18(4). The option itself was valid (turnover below the limit; no inter-State supplies), so Section 10(2) and Exercise-29 are not involved.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX Industries to the following action under the CGST Act, 2017 (read with the corresponding provisions of the PGST Act, 2017):

1. Route - determination under **Section 74A(1)**. The amount under Section 18(4) is, by Rule 44(4), part of the output tax liability of the firm; it is therefore tax 'not paid' within Section 74A(1). It is not 'wrongly availed' credit: the credit was validly availed when it was taken, so Section 50(3) (interest at the higher rate for wrongly availed and utilised credit) and Rule 88B(3) do not apply. The amount pertains to FY 2025-26 (the option took effect on 01.04.2025), so Section 74A is the demand provision and Sections 73/74 are not used [Section 74A(12)].
2. Tax demanded - Rs.10,44,100/-, being Rs.5,22,050/- of central tax and Rs.5,22,050/- of Punjab State tax. It is computed head-wise [Rule 44(2)] on the basis of the working below: inputs in stock Rs.3,18,600/-, semi-finished goods Rs.91,000/-, finished goods Rs.2,16,000/-, capital goods Rs.4,18,500/-. The amount for capital goods is the credit availed multiplied by the remaining useful life in months over 60 [Rule 44(1)(b): useful life five years]. Rule 44 does not say from which date the life is counted; the date of the invoice is adopted (as in Rule 43(1)(c)), and a part of a month is counted as a month used, as in the illustration in the Rule (4 years, 6 months and 15 days of use leaves 5 months). The 'five percentage points per quarter or part thereof' rule is the entry-side rule for capital goods on which credit is allowed under Section 18(1) (Rule 40), not Rule 44.
3. Time limit - the annual return of a composition person for FY 2025-26 is FORM GSTR-4, due on 30.04.2026. A notice may be issued within forty-two months of that date, i.e. up to 30.10.2029 [Section 74A(2)], and the order must be passed within twelve months of the notice, extendable by six months [Section 74A(7)].

4. Interest - under **Section 50(1)** at 18% per annum on the tax not paid, from 31.05.2025 (the day after the last date for ITC-03 under Rule 3(3)) till payment. Up to 30.11.2026 (549 days) it is Rs.2,82,680/- (Rs.1,41,340/- each under the CGST and PGST Acts). The firm may contend that no interest is due because the ledger balance of Rs.6,00,000/- was available to discharge a part of the liability throughout; the notice does not accept this, since the ledger was never debited, and the contention is left to adjudication.

5. Penalty - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.52,205/- under each Act (Rs.1,04,410/- in all). The default arises from a mistaken belief shared with the firm's accountant that the credit 'lapses' on opting for composition. The firm filed CMP-02 and paid composition tax openly; it produced the stock register, the BOM and the invoices voluntarily; and there is no evidence that it concealed its stock or tried to use the credit. Fraud, wilful misstatement or suppression is therefore not alleged (contrast Exercise-49 and Exercise-52). The concession of **Section 74A(8)** (no penalty if tax and interest are paid before the notice, or within sixty days of the notice) is available. Section 74A(11) is not attracted, as nothing was self-assessed or collected from customers.

6. Specific offence penalties - none of the clauses of Section 122(1) fits a failure to pay the amount under Section 18(4) (clause (vii) concerns credit taken without receipt of goods or services and clause (ix) concerns the ISD). The residual penalty under Section 125 is therefore not proposed in addition, as penalty under Section 74A(5)(i) is proposed for the same default [Section 75(13)]; and, as the breach has a tax effect, Section 126 does not oblige the officer to drop it.

7. Mode of payment - Section 18(4) allows the amount to be paid by debit of the electronic credit ledger or the electronic cash ledger. The firm may therefore discharge the tax by debiting the credit already lying in its ledger (Rs.3,00,000/- each in central tax and State tax), the balance through cash, with the interest and the penalty (if any) in cash. After the payment, the remaining credit in the ledger lapses by the proviso to Section 18(4). The tax paid is to be reported by FORM GST ITC-03 (late) and, where paid through FORM GST DRC-03, with the cause of payment as 'Section 74A'.

8. Recovery - under Sections 78 and 79 if the confirmed amount is not paid in time; the ledger balance may also be adjusted by the proper officer against the confirmed amount.

9. Alternative route (not adopted) - the firm cannot be assessed as a non-filer under Section 62, as the issue is one of payment, not of a return. Withdrawal of the composition option (Rule 6) is not warranted, since the firm is eligible and the default is curable by payment.

10. Prosecution - Section 132 has been considered and is not proposed: the amount involved (Rs.10.44 lakh) is far below the lowest monetary threshold of Section 132(1) (Rs.1 crore; see Template XI of the Master Chart), the default is not shown to be intentional and the firm has co-operated.

Illustrative working of the Rule 44 amount and of interest up to 30.11.2026:

Stock on 31.03.2025	Basis	Total ITC (Rs.)	Central tax (Rs.)	PGST (Rs.)
Inputs	Qty in stock / qty bought, per invoice	3,18,600	1,59,300	1,59,300
Semi-finished goods	BOM x invoice rates	91,000	45,500	45,500
Finished goods	BOM x invoice rates	2,16,000	1,08,000	1,08,000
Capital goods	ITC x remaining months / 60	4,18,500	2,09,250	2,09,250
TAX (Section 18(4))		10,44,100	5,22,050	5,22,050
Interest 18%, 31.05.2025 - 30.11.2026 (549 days)		2,82,680	1,41,340	1,41,340
Penalty 74A(5)(i)	10% of tax	1,04,410	52,205	52,205
TOTAL		**14,31,190**	**7,15,595**	**7,15,595**

Basis: *Opening stock position is taken on the day immediately preceding the option (31.03.2025), as Section 18(4) requires. All the invoices are within eighteen months of that date; Section 18(4), unlike Section 18(2), has no one-*

year bar on the invoice age. Central tax and State tax are worked separately as Rule 44(2) requires; as all the invoices carried CGST and PGST in equal halves, the halves are equal.

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Industries, a partnership firm situated at YYYY, Focal Point, Ludhiana, Punjab, through its Managing Partner Mr. Z, is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Ludhiana Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the credit of input tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods, on 31.03.2025, being the day immediately preceding 01.04.2025 on which it opted to pay tax under Section 10, should not be determined at Rs.10,44,100/- (central tax Rs.5,22,050/- and Punjab State tax Rs.5,22,050/-) under Section 18(4) of the CGST Act, 2017 read with Rule 44 of the CGST Rules, 2017 and the corresponding provisions of the PGST Act, 2017 and Rules;

(ii) the said amount of Rs.10,44,100/- (Rupees Ten Lakh Forty-Four Thousand One Hundred only), forming part of its output tax liability under Rule 44(4) and not paid, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the PGST Act, 2017, the same being allowed to be paid by debit of the electronic credit ledger or the electronic cash ledger, and the balance credit in the electronic credit ledger being thereafter lapsed under the proviso to Section 18(4);

(iii) interest at the rate of 18% per annum under Section 50(1) of the CGST Act, 2017/PGST Act, 2017 should not be charged and recovered on the amount at (ii) above, from 31.05.2025 till the date of payment; and

(iv) penalty of Rs.52,205/- (central tax) and Rs.52,205/- (Punjab State tax), total Rs.1,04,410/-, being ten per cent of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/PGST Act, 2017 (without prejudice to the benefit of nil penalty under Section 74A(8) on payment of tax and interest within the time therein specified).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-LDH

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Ludhiana Commissionerate, Punjab

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Punjab Goods and Services Tax Act, 2017)

To,
M/s XXX Industries (GSTIN: [●]),
through its Managing Partner, Mr. Z,
YYYY, Focal Point, Ludhiana, Punjab.

(hereinafter referred to as 'the Noticee')

WHEREAS M/s XXX Industries, a partnership firm, is a registered manufacturer of forged hand tools at Focal Point, Ludhiana, and was a regular taxpayer with turnover of Rs.1,38,40,000/- in FY 2024-25, all by intra-State supplies of goods. On 14.03.2025 the Noticee filed FORM GST CMP-02 opting to pay tax under Section 10 of the CGST Act, 2017 from 01.04.2025 (RUD-1). It has since filed FORM GST CMP-08 for the quarters ended June, September and December 2025. It has not filed FORM GST ITC-03 (RUD-1);

2. AND WHEREAS in the scrutiny of its returns under Section 61, it was noticed that the electronic credit ledger of the Noticee showed an unutilised balance of Rs.6,00,000/- on 31.03.2025 and that the Noticee had availed credit in its FORM GSTR-3B for March 2025 on purchases made up to 14.03.2025 (RUD-2). A notice in FORM GST ASMT-10 dated 12.01.2026 was issued (RUD-3), to which the Noticee replied on 02.02.2026 that the credit lapses on opting for composition and no ITC-03 is required (RUD-4);

3. AND WHEREAS a summons dated 20.02.2026 under Section 70 of the CGST Act, 2017 was issued (RUD-5) and Mr. Z appeared on 06.03.2026 and produced the stock register as on 31.03.2025, the purchase invoices, the BOM, the fixed asset register and the electronic credit ledger (RUD-6 to RUD-9). In his statement recorded on 06.03.2026 (RUD-10), he admitted that:

- the stock register as on 31.03.2025 is correct and is based on a physical count made by the firm on 31.03.2025, and the capital goods listed in the fixed asset register are still in use;
- he had been told by the firm's accountant that the old credit is gone once the firm goes composition, and he had never filed ITC-03 or paid any amount against the credit; and
- no part of the credit on stock or capital goods was reversed or paid at any time;

4. AND WHEREAS the scrutiny of the stock register, the BOM and the invoices (RUD-6 to RUD-9) shows that, on 31.03.2025, being the day immediately preceding the date of exercise of the option, the Noticee held (a) inputs in stock on which credit of Rs.3,18,600/- had been availed, (b) semi-finished goods (6,500 pieces) and finished goods (10,000 pieces) containing inputs on which credit of Rs.91,000/- and Rs.2,16,000/- respectively had been availed, and (c) capital goods (CNC turning centre, hydraulic forging press and screw type air compressor) on which credit of Rs.4,18,500/-, being the credit availed multiplied by the months of remaining useful life (taken as five years, the period of use being counted from the invoice date) divided by sixty, is attributable, as detailed in Annexure-A;

5. AND WHEREAS Section 18(4) of the CGST Act, 2017 requires a registered person who has availed input tax credit and opts to pay tax under Section 10 to pay an amount equivalent to the credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods, reduced by the prescribed percentage points, on the day immediately preceding the date of exercising the option, by debit of the electronic credit ledger or the electronic cash ledger; Rule 44 prescribes the manner of computation (separately for central tax and State tax) and requires the

amount to form part of the output tax liability and to be furnished in FORM GST ITC-03, which in the case of a person opting under Rule 3(3) is to be filed within sixty days from the commencement of the financial year, i.e. by 30.05.2025. The Noticee neither paid the amount nor filed ITC-03, and the balance of credit which is to lapse only after such payment still stands in its ledger, though Section 10(4) of the Act denies a composition person any credit of input tax;

6. AND WHEREAS the amount payable by the Noticee under Section 18(4) read with Rule 44 is thus Rs.5,22,050/- as central tax and Rs.5,22,050/- as Punjab State tax, total Rs.10,44,100/-, and it appears that the said amount, being a part of its output tax liability under Rule 44(4), has not been paid;

7. AND WHEREAS the Noticee filed CMP-02, paid composition tax openly, and produced the stock records, the BOM and the invoices voluntarily on summons; there is no evidence of fraud, wilful misstatement or suppression of facts to evade tax, and the non-payment appears to be a case other than fraud, wilful misstatement or suppression of facts, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017/PGST Act, 2017;

8. AND WHEREAS it thus appears that the Noticee has contravened Section 18(4) of the CGST Act, 2017 read with Rules 3(3) and 44 of the CGST Rules, 2017 (and the corresponding provisions of the PGST Act and Rules), by not paying the amount equivalent to the credit on stock and capital goods and not furnishing FORM GST ITC-03, and is liable to:

(a) demand and recovery of the amount under Section 74A of the CGST Act, 2017/PGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/PGST Act, 2017; and

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/PGST Act, 2017;

NOW, THEREFORE

M/s XXX Industries, through its Managing Partner Mr. Z, is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Ludhiana Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the credit of input tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods, on 31.03.2025, being the day immediately preceding 01.04.2025 on which it opted to pay tax under Section 10, should not be determined at Rs.10,44,100/- (central tax Rs.5,22,050/- and Punjab State tax Rs.5,22,050/-) under Section 18(4) of the CGST Act, 2017 read with Rule 44 of the CGST Rules, 2017 and the corresponding provisions of the PGST Act, 2017 and Rules, as detailed in Annexure-A;

(ii) the said amount of Rs.10,44,100/- (Rupees Ten Lakh Forty-Four Thousand One Hundred only), forming part of its output tax liability under Rule 44(4) and not paid, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the PGST Act, 2017, the same being allowed to be paid by debit of the electronic credit ledger or the electronic cash ledger, and the balance credit in the electronic credit ledger being thereafter lapsed under the proviso to Section 18(4);

(iii) interest at the rate of 18% per annum under Section 50(1) of the CGST Act, 2017/PGST Act, 2017 should not be charged and recovered on the amount at (ii) above, from 31.05.2025 till the date of payment; and

(iv) penalty of Rs.52,205/- (central tax) and Rs.52,205/- (Punjab State tax), total Rs.1,04,410/-, being ten per cent of the tax due, should not be imposed on it under Section 74A(5)(i) of the CGST Act, 2017/PGST Act, 2017 (without prejudice to the benefit of nil penalty under Section 74A(8) on payment of tax and interest within the time therein specified).

9. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately

intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;

- attention is drawn to the benefit under Section 74A(8) of the CGST Act, 2017/PGST Act, 2017, whereby, if the tax at (ii) and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded; the Noticee may pay by debiting its electronic credit ledger or cash ledger as stated at (ii) above;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/PGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Portal record of FORM GST CMP-02 filed on 14.03.2025, the CMP-08 returns and the nil ITC-03 record;

RUD-2: FORM GSTR-3B for March 2025 and electronic credit ledger as on 31.03.2025 and as on date;

RUD-3: Notice in FORM GST ASMT-10 dated 12.01.2026;

RUD-4: Reply of the Noticee dated 02.02.2026;

RUD-5: Summons dated 20.02.2026 under Section 70, with proof of service;

RUD-6: Stock register as on 31.03.2025 of inputs, semi-finished goods and finished goods;

RUD-7: Purchase invoices (inputs and capital goods) relied on in Annexure-A;

RUD-8: Bill of materials with the invoice-rate working of ITC per piece;

RUD-9: Fixed asset register as on 31.03.2025;

RUD-10: Statement of Mr. Z recorded under Section 70 on 06.03.2026;

Annexure-A: Working of the amount under Section 18(4) read with Rule 44 and of interest [as per the tables in the Situation and Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Ludhiana Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Ludhiana, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Teaching point - mechanics of Rule 44 and ITC-03 and the interplay with Section 10(4).*** *The credit of a regular taxpayer does not 'lapse' on opting for composition; the lapse is the proviso to Section 18(4), and it operates only after the amount for stock and capital goods has been paid. Section 10(4) is the reason for the payment, not a substitute for it. Compare Exercise-45 (the same Rule 44 computation on cancellation of registration, reported in GSTR-10 under Section 29(5)), Exercise-44 (sale of a used machine: Section 18(6), 'higher of' rule) and Exercise-29 (composition person who is not eligible or crosses the limit).*
- ***Computation.*** *Rule 44(1)(a) is a proportion of the credit on the corresponding invoices (quantity in stock over quantity bought); for semi-finished and finished goods the credit contained is worked from the BOM. For capital goods it is the credit multiplied by the remaining months out of 60. Rule 44 itself says nothing about the date from which the five-year life is counted; the date of invoice was adopted and a part of a month was counted as used. The adjudicating authority should state the assumption in the*

order. Where invoices are not available, Rule 44(3) allows an estimate at the market price, and the details must then be certified by a chartered or cost accountant [Rule 44(5)].

- ***Why not Section 50(3)?*** *The credit was lawfully availed when taken. What is unpaid is an output liability created by Section 18(4) and Rule 44(4), so only the 18% rate of Section 50(1) is proposed. The Master Chart note on 'wrongly availed and utilised' credit (24%) does not cover Template V, row 12. If the firm had used the ledger credit after 01.04.2025 (for example, to pay anything), the position would have to be examined afresh.*
- ***Fraud or non-fraud?*** *On these facts (open filing of CMP-02 and CMP-08, voluntary production of records, genuine advice from an accountant) only Section 74A(5)(i) is proposed. If it were shown that the firm knew of the requirement and chose to hold on to the credit, the charge would move to Section 74A(5)(ii) and the notice would have to discuss that evidence.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh). Here the central tax demand is Rs.5,22,050/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

***

Exercise 72

Excess and irregular distribution of input tax credit by an Input Service Distributor - Section 20 and Rule 39, recovery from recipients under Section 21 and penalty under Section 122(1)(ix)

Exercise 72: Excess and irregular distribution of input tax credit by an Input Service Distributor - Section 20 and Rule 39, recovery from recipients under Section 21 and penalty under Section 122(1)(ix)

Situation in Brief:

1. M/s XXX Ltd., a company listed on the Bombay Stock Exchange, with its head office at YYYY, Nariman Point, Mumbai, Maharashtra (Chief Financial Officer: Mr. Z; General Manager - Taxation: Mr. P), manufactures and sells industrial pumps from three manufacturing units, each registered separately under the Central Goods and Services Tax Act, 2017 (all with the same PAN): Unit-A at Ahmedabad (Gujarat), Unit-B at Bengaluru (Karnataka) and Unit-C at Chennai (Tamil Nadu). The head office has no manufacturing activity. The audit fees, brand advertising and information-technology services of the company are billed by Mumbai suppliers to the head office. With effect from 01.04.2025 the head office is registered as an Input Service Distributor [ISD] (GSTIN: [•]), as required by Section 20 of the CGST Act, 2017 as amended by the Finance (No. 2) Act, 2024 and by Section 24 of the Act, and it files FORM GSTR-6 monthly.

2. Under the ISD invoices issued by it for the months from April 2025 to September 2025, the ISD distributed the credit on the invoices of the Mumbai suppliers, which carried central tax and Maharashtra State tax in equal halves, to the three units as integrated tax (all the three recipients being in States other than Maharashtra). The credit distributed each month, by the nature of the service (all of them are fixed monthly retainers, so the amounts are the same each month), was:

Credit on input services received by the ISD (monthly retainer)	Credit per month (Rs.)
Statutory/internal audit retainer (all units)	3,00,000
Group-wide brand advertising retainer (all units)	9,00,000
ERP roll-out and managed service for Unit-A plant only	12,00,000
Recruitment and training for the Bengaluru campus only	1,00,000
Corporate club / health club membership of directors	60,000
Outdoor catering for board and management meetings	75,000
TOTAL credit distributed per month	**26,35,000**

3. In every month the ISD distributed the whole of the above credit to the three units in the ratio of the turnovers of the units in FY 2023-24, kept in the 'standard allocation key' of its accounting software since March 2024, whatever the nature of the service. The turnover of the units in the two years was:

Unit	Turnover FY 2023-24 (Rs. crore)	Ratio used by ISD	Turnover FY 2024-25 (Rs. crore)
Unit-A, Ahmedabad (Gujarat)	350	35%	420
Unit-B, Bengaluru (Karnataka)	350	35%	310
Unit-C, Chennai (Tamil Nadu)	300	30%	270
TOTAL	**1,000**	**100%**	**1,000**

4. Each distribution was made in the month of the invoice and shown in the FORM GSTR-6 of the month, which was filed on the 13th of the next month, with the ISD invoices. The units showed the credit in Table 4(A)(4) of their FORM GSTR-3B for the month in which it appeared in their statements and utilised the whole of it against their output tax in the same return, filed on the due date, as under:

Month of distribution	GSTR-3B in which credit utilised (filed on)	Unit-A credit (Rs.)	Unit-B credit (Rs.)	Unit-C credit (Rs.)
April 2025	20.06.2025	9,22,250	9,22,250	7,90,500

Month of distribution	GSTR-3B in which credit utilised (filed on)	Unit-A credit (Rs.)	Unit-B credit (Rs.)	Unit-C credit (Rs.)
May 2025	20.07.2025	9,22,250	9,22,250	7,90,500
June 2025	20.08.2025	9,22,250	9,22,250	7,90,500
July 2025	20.09.2025	9,22,250	9,22,250	7,90,500
August 2025	20.10.2025	9,22,250	9,22,250	7,90,500
September 2025	20.11.2025	9,22,250	9,22,250	7,90,500
TOTAL		**55,33,500**	**55,33,500**	**47,43,000**

5. A departmental audit of the ISD under Section 65 was undertaken after FORM GST ADT-01 dated 12.01.2026, from 02.02.2026 to 13.02.2026, by the audit team of the Mumbai CGST Audit Commissionerate. The audit team found that the ERP roll-out and managed-service invoices, issued by M/s AAA Technologies, Mumbai, name 'Unit-A Plant, Ahmedabad, SAP S/4 implementation' as the site and beneficiary, and the training invoices of M/s BBB Learning, Mumbai, relate to the campus at Bengaluru; that the only unit which uses the ERP of M/s AAA Technologies is Unit-A (Units B and C run their own systems); that the invoices of the club and of the caterer were entered in the GSTR-6 as 'eligible'; and that the allocation key had not been updated for FY 2024-25. FORM GST ADT-02 was issued on 05.03.2026.

6. The statement of Mr. P, General Manager - Taxation of the ISD, was recorded on 10.02.2026 under Section 70 of the CGST Act, 2017. He stated that the ISD uses one 'standard allocation key' for all services; that the accounts team had marked all invoices as eligible; that he knew that the ISD had to use the turnover of the preceding financial year and that credit of attributable services must go to the unit concerned, but did not check the key after the ISD went live on 01.04.2025; that he agrees with the audit working; that the heads of the units never questioned the ISD invoices; that no one in the company directed the allocation, which was the default of the software; and that the company is ready to correct the position. The statements of the finance heads of Unit-B and Unit-C, recorded on 18.02.2026 and 19.02.2026 under Section 70, show that they took the credit as shown in the ISD invoices without checking it, and that Unit-C had been surprised to see an ERP credit but did not query it.

7. The data of the three units were verified from their GSTR-3B returns and credit ledgers. The credit distributed by the ISD appears in Table 4(A)(4) of the returns and the ledgers show that each month's credit was utilised in full on the date of the return as in the table at para 4 above. The ISD has not issued any ISD credit note, and no recipient has reversed any amount. The annual return of the company for FY 2025-26 is not yet due.

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Ltd. (ISD) and by the recipient units (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against the ISD and the recipient units, and the officer by whom the notice is to be issued (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued, calling upon M/s XXX Ltd. (ISD) and the recipient units to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice.

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SUGGESTED SOLUTION

(Audit under Section 65, inquiry on summons, Determination of Tax Liability under Section 21 read with Section 74A, and Draft Show Cause Notice - M/s XXX Ltd. (ISD) and Units, Mumbai CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Maharashtra GST Act, 2017 [MGST Act], the Integrated GST Act, 2017 [IGST Act] and the Rules made thereunder):

1. **Section 20 of the CGST Act, 2017 read with Rule 39(1) of the CGST Rules, 2017 - by the ISD.** From 01.04.2025 the head office has had to be registered as an ISD and to distribute the credit of the input services it receives; the credit is to be distributed in the manner, within the time and subject to the restrictions and conditions prescribed in Rule 39. The ISD distributed (a) credit on ineligible services (club membership and outdoor catering, blocked by Section 17(5)(b)), which was not 'credit available for distribution' (Rule 39(1)(b): the amount distributed cannot exceed the credit available), (b) credit on services attributable to one unit (the ERP roll-out for Unit-A and the training for Unit-B), to all the three units, contrary to the rule that credit on services attributable to one recipient is distributed only to that recipient (Rule 39(1)(c)), and (c) the credit that was common to all units on the turnover of FY 2023-24, instead of the turnover of the relevant period, which is the preceding financial year, FY 2024-25 (Rule 39(1) and its Explanation, using the formula C1 = (t1 / T) x C).
2. **Section 16(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 - by the recipient units (Unit-B and Unit-C).** The credit availed by these two units in Table 4(A)(4) of their FORM GSTR-3B exceeded the credit to which they were entitled under a correct distribution, and was utilised in full. Credit which a recipient takes on the strength of a wrong ISD distribution is credit it was not entitled to. Unit-A received less than its entitlement, and no contravention arises at Unit-A.
3. **Section 122(1)(ix) of the CGST Act, 2017** is the penal provision for the ISD, whose act is described in the clause itself: 'takes or distributes input tax credit in contravention of section 20, or the rules made thereunder'.

Note: *The old clauses (a) to (e) of Section 20(2) (cap on credit available, attributable credit to one recipient only, pro rata on turnover) were omitted by the Finance (No. 2) Act, 2024 from 01.04.2025 [Notification No. 16/2024-Central Tax dated 06.08.2024], and the same conditions now sit in Rule 39(1) [Rule 39 as amended by Notification No. 12/2024-Central Tax dated 10.07.2024, effective 01.04.2025]. The Master Chart (Template V, row 15) refers to 'Section 20(2)(b) read with Rule 39': for the periods from 01.04.2025 the correct reference is Section 20 read with Rule 39(1)(b) (and 39(1)(c) for attributable credit). For periods up to 31.03.2025 the Chart's reference to Section 20(2)(b) is correct.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the persons named to the following action under the CGST Act, 2017 (read with the corresponding provisions of the MGST Act, the IGST Act and the State GST Acts of Karnataka and Tamil Nadu):

1. Who pays - Section 21 - 'Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74 [or section 74A], as the case may be, shall, mutatis mutandis, apply for determination of the amount to be recovered.' The tax is therefore demanded NOT from the ISD, but from the recipients who received the excess. As the credit pertains to FY 2025-26, Section 74A is applied [Section 74A(12)].
2. How the excess is worked out - recipient by recipient - the correct monthly distribution under Rule 39(1) is compared, unit by unit, with the actual distribution (table below). Only the recipients who received more than their entitlement (Unit-B and Unit-C) are called upon. Unit-A, which received less, cannot be set off against them: Section 21 recovers the 'excess credit so distributed' from 'such

recipients', i.e. recipient by recipient. The ISD is to correct the position for Unit-A by an ISD credit note and a fresh ISD invoice under Rule 39(2) and (3), and Unit-A may then avail the credit in its return, subject to Section 16(4).

3. Tax demanded - integrated tax of Rs.27,01,500/- from Unit-B and Rs.27,99,000/- from Unit-C, total Rs.55,00,500/-, under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Section 21. Of the monthly excess distribution the sum of Rs.1,35,000/- per month (Rs.8,10,000/- in six months) is credit that was not available at all for distribution (the blocked items); the rest of the excess is credit available but distributed to the wrong units or in wrong proportions.

4. Interest - Section 21 provides interest, which, as the recipients wrongly availed and utilised the credit, is charged at the higher rate under **Section 50(3)** read with **Rule 88B(3)** (24% per annum), from the date of utilisation (the date of the return in which the credit was utilised) till payment. Up to 30.11.2026 it is Rs.8,02,309/- for Unit-B and Rs.8,31,264/- for Unit-C (Rs.16,33,573/- in all). The rate is the one notified for the purpose of Section 50(3); the Master Chart note on Template V states the same.

5. Penalty on the recipients - under **Section 74A(5)(i)**, ten per cent of the tax due: Rs.2,70,150/- (Unit-B) and Rs.2,79,900/- (Unit-C). Fraud, wilful misstatement or suppression is not alleged. The distribution was done openly in GSTR-6, invoice-wise; the units took the credit as per the ISD invoices and the statements show that they did not check it. A penalty equal to the tax under Section 74A(5)(ii) would need evidence that the unit knew that the credit was wrong (e.g. Unit-C received a credit on an ERP of which it was not a user, which is a case of negligence, not of intent to evade). The concession of **Section 74A(8)** applies.

6. Penalty on the ISD - under **Section 122(1)(ix)** (and the corresponding clause of the MGST Act), a penalty of Rs.10,000/- or an amount equivalent to the input tax credit distributed irregularly, whichever is higher. The ISD is itself a 'taxable person' and no tax is demanded from it, so Section 75(13) (no second penalty on the same person for the same act) does not stand in the way. The credit distributed irregularly is the credit that went to units in excess of their entitlement, Rs.55,00,500/- (Rs.27,50,250/- under each of the CGST Act and MGST Act, as the credit originated as central tax and State tax in equal halves). Section 126 requires the amount to be commensurate with the degree and severity of the breach; as the lapse arises from a software key and not from intent, the adjudicating authority may wish to consider a lower penalty, but the notice proposes the statutory measure.

7. Section 122(1A) and 122(3) - Section 122(1A) penalises the person who retains the benefit of a transaction covered by clause (ix) and at whose instance it is conducted. No such person has been identified: the statement of Mr. P shows that the wrong key was a software default; the units that retained the benefit did not conduct the distribution. Section 122(1A) is therefore not proposed, but the draft is to be re-visited if the emails to be examined show that any person directed the allocation. Section 122(3) is not attracted.

8. Who issues the notice and where - this is the most important decision. The demand under Section 21 is on the recipient, determined under Section 74A as for any other person, and the credit was availed and utilised in the returns of the recipient. The proper officer is thus the officer having jurisdiction over Unit-B (Bengaluru) and over Unit-C (Chennai), and the officer having jurisdiction over the ISD (Mumbai) is the proper officer for the penalty on the ISD. A single notice by the Mumbai officer to the ISD and to both the recipient units demanding tax from them could be attacked on the ground of territorial jurisdiction, unless the Commissioners concerned have assigned the function to that one officer. The safe course is separate notices (a notice to each recipient by its jurisdictional officer, with the audit report and the working attached, and the penalty notice to the ISD by the Mumbai officer). The single notice drafted in Part D assumes that the three jurisdictions have assigned the case to one proper officer by orders under Section 5/Section 6 [number and date to be filled in], and is the model of what each of the separate notices would contain.

9. Why a single notice is attractive if the jurisdiction is in order - the evidence, the working and the correction at the ISD level are the same for all; inconsistent findings in different States are avoided; and under Explanation 1 to Section 74A, as it is understood, where a notice names more than one person, the conclusion of the proceedings against the main persons under Section 74A (by payment with the concessions) is deemed to conclude the penalty proceedings under Sections 122 and 125 against the

others in the same notice, which would reach the ISD.

10. Limitation - the annual return for FY 2025-26 is due on 31.12.2026, so the notice to a recipient may be issued up to 30.06.2030 [Section 74A(2)], and the order is due within twelve months of the notice [Section 74A(7)], extendable by six months. A penalty-only notice to the ISD has no separate limit in Section 122 itself; it is therefore issued together with the demand notice.

11. Recovery and other - Sections 78/79 for the recipients; attachment under Section 83 is not called for, as the company is a listed company with substantial assets. Prosecution under Section 132 is not proposed; the amount of tax involved (Rs.55,00,500/-) is below the monetary limits and there is no intention to evade.

Illustrative working of the correct and the actual distribution (per month, Rs.):

Credit per month	Rs.	Correct distribution under Rule 39(1)
Statutory/internal audit retainer (all units)	3,00,000	All three, pro rata on FY 2024-25 turnover (42:31:27)
Group-wide brand advertising retainer (all units)	9,00,000	All three, pro rata on FY 2024-25 turnover (42:31:27)
ERP roll-out and managed service for Unit-A plant only	12,00,000	Unit-A only
Recruitment and training for the Bengaluru campus only	1,00,000	Unit-B only
Corporate club / health club membership of directors	60,000	Nil - credit not available (Section 17(5)(b))
Outdoor catering for board and management meetings	75,000	Nil - credit not available (Section 17(5)(b))
TOTAL credit available for distribution (eligible)	**25,00,000**	

Unit	Correct (Rs.)	Actual by ISD (Rs.)	Excess/(Short) per month (Rs.)	Six months (Rs.)
Unit-A, Ahmedabad (Gujarat)	17,04,000	9,22,250	(7,81,750)	(46,90,500)
Unit-B, Bengaluru (Karnataka)	4,72,000	9,22,250	4,50,250	27,01,500
Unit-C, Chennai (Tamil Nadu)	3,24,000	7,90,500	4,66,500	27,99,000
TOTAL	**25,00,000**	**26,35,000**	**1,35,000**	**8,10,000**

Month	Utilised on	Unit-B excess (Rs.)	Unit-B interest 24% (Rs.)	Unit-C excess (Rs.)	Unit-C interest 24% (Rs.)
April 2025	20.06.2025	4,50,250	1,56,317	4,66,500	1,61,959
May 2025	20.07.2025	4,50,250	1,47,435	4,66,500	1,52,756
June 2025	20.08.2025	4,50,250	1,38,258	4,66,500	1,43,247
July 2025	20.09.2025	4,50,250	1,29,080	4,66,500	1,33,739
August 2025	20.10.2025	4,50,250	1,20,198	4,66,500	1,24,536
September 2025	20.11.2025	4,50,250	1,11,021	4,66,500	1,15,027
TOTAL		**27,01,500**	**8,02,309**	**27,99,000**	**8,31,264**

Basis: *The excess for each unit is (actual minus correct) per month. The correct amount for common services is C x (turnover of the unit in FY 2024-25 / turnover of all recipients to whom the service is attributable); for services attributable to one recipient it is the whole credit for that recipient; blocked items have a correct amount of nil. Interest is simple, at 24% per annum on the excess from the date of utilisation to 30.11.2026, on the actual number*

of days. The monthly credit is the sum of central tax and State tax charged by the Mumbai suppliers; to the units in other States it is passed on as integrated tax [Rule 39(1)].

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, (1) M/s XXX Ltd., the Input Service Distributor, Mumbai, (2) M/s XXX Ltd., Unit-B, Bengaluru, Karnataka and (3) M/s XXX Ltd., Unit-C, Chennai, Tamil Nadu, being separately registered, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST, [•] Division, Mumbai Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the credit distributed by the ISD from April 2025 to September 2025 should not be held to have been distributed in contravention of Section 20 of the CGST Act, 2017 read with Rule 39 of the CGST Rules, 2017, resulting in excess distribution of Rs.55,00,500/- of integrated tax credit to Unit-B and Unit-C, as detailed in Annexure-A;

(ii) the excess credit of Rs.27,01,500/- distributed to Unit-B and Rs.27,99,000/- distributed to Unit-C should not be recovered from them (Noticees 2 and 3) under Section 21 read with Section 74A(1) of the CGST Act, 2017, Section 20 of the IGST Act, 2017 and the corresponding provisions of the Karnataka and Tamil Nadu GST Acts, 2017;

(iii) interest at the rate of 24% per annum under Section 21 read with Section 50(3) of the CGST Act, 2017 and Rule 88B(3), from the dates of utilisation shown in Annexure-A till payment, should not be recovered from Noticees 2 and 3 (Rs.8,02,309/- and Rs.8,31,264/- respectively up to 30.11.2026);

(iv) penalty of Rs.2,70,150/- on Unit-B and Rs.2,79,900/- on Unit-C, being ten per cent of the tax due, should not be imposed under Section 74A(5)(i) of the CGST Act, 2017/IGST Act, 2017 (without prejudice to the benefit of Section 74A(8)); and

(v) penalty of Rs.55,00,500/- (Rs.27,50,250/- under the CGST Act and Rs.27,50,250/- under the MGST Act), being an amount equivalent to the input tax credit distributed irregularly, should not be imposed on Noticee 1 (the ISD) under Section 122(1)(ix) of the CGST Act, 2017/MGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-MUM

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - [●], Mumbai Commissionerate, Maharashtra

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 21 read with Section 74A and under Section 122 of the Central Goods and Services Tax Act, 2017, read with Section 20 of the Integrated Goods and Services Tax Act, 2017 and the corresponding provisions of the Maharashtra, Karnataka and Tamil Nadu Goods and Services Tax Acts, 2017)

[Jurisdiction: issued by the undersigned as the proper officer for all the three registrations of the Noticees, the function having been assigned by Order No. [●] dated [●] of the Principal Commissioner, Mumbai CGST Commissionerate, and the jurisdictional Commissioners at Bengaluru and Chennai. If there is no such assignment, separate notices are to be issued by the jurisdictional officers.]

To,
1. M/s XXX Ltd. - Input Service Distributor (GSTIN: [●]), YYYY, Nariman Point, Mumbai - 400 021, Maharashtra (Noticee 1 / 'the ISD');
2. M/s XXX Ltd. - Unit-B (GSTIN: [●]), Bengaluru, Karnataka (Noticee 2 / 'Unit-B'); and
3. M/s XXX Ltd. - Unit-C (GSTIN: [●]), Chennai, Tamil Nadu (Noticee 3 / 'Unit-C').

(hereinafter referred to as 'the Noticees'. Each registration is a distinct person under Section 25(4) of the CGST Act, 2017, and the liability of each is stated separately.)

WHEREAS M/s XXX Ltd., a listed company, has its head office at Mumbai, and three manufacturing units at Ahmedabad (Unit-A), Bengaluru (Unit-B) and Chennai (Unit-C), each separately registered under the same PAN. The head office is registered as an Input Service Distributor from 01.04.2025 and receives tax invoices from Mumbai suppliers for audit services, brand advertising and information-technology services, which it distributes to the three units as integrated tax by ISD invoices, shown in its FORM GSTR-6 (RUD-1 and RUD-2);

2. AND WHEREAS the audit of the ISD under Section 65 (FORM GST ADT-01 dated 12.01.2026; audit report in FORM GST ADT-02 dated 05.03.2026) (RUD-3) found that, for the months from April 2025 to September 2025, the ISD distributed every month the whole credit of Rs.26,35,000/- (Rs.1,58,10,000/- in six months) to the three units in the ratio of the turnover of FY 2023-24 (35:35:30), taken from the standard allocation key in its software (RUD-4), as detailed in Annexure-A;

3. AND WHEREAS the invoices of M/s AAA Technologies, Mumbai for the ERP roll-out and managed service (credit Rs.12,00,000/- per month) describe the Unit-A plant at Ahmedabad as the site and beneficiary, and Mr. P in his statement admits that only Unit-A uses that ERP (RUD-5, RUD-9); the invoices of M/s BBB Learning, Mumbai for training (credit Rs.1,00,000/- per month) relate to the Bengaluru campus only (RUD-6); the credit on these services was attributable to a single recipient each, and under Rule 39(1)(c) was to be distributed only to that recipient;

4. AND WHEREAS the invoices of the corporate club membership of directors (Rs.60,000/- per month) and of outdoor catering for board and management meetings (Rs.75,000/- per month) (RUD-7) are covered by Section 17(5)(b) of the CGST Act, 2017, so that no credit was available on them for distribution (Rule 39(1)(b)); yet they were shown as 'eligible' and distributed;

5. AND WHEREAS the audit/accounting evidence further shows that the credit common to all the units (audit retainer Rs.3,00,000/- and brand advertising Rs.9,00,000/- per month) was distributed on the turnover of FY 2023-24, though the relevant period under the Explanation to Rule 39 is the preceding financial year, FY 2024-25, in which the turnovers of Unit-A, Unit-B and Unit-C were Rs.420 crore, Rs.310 crore and Rs.270 crore (42:31:27) (RUD-8);

6. AND WHEREAS the statement of Mr. P, General Manager - Taxation, recorded on 10.02.2026 under Section 70 (RUD-9), shows that the ISD used one allocation key for all services, marked all invoices as eligible, knew the requirements of the Rules but did not check the key after the go-live on 01.04.2025,

and agreed with the working of the audit team; the statements of the finance heads of Unit-B and Unit-C recorded on 18.02.2026 and 19.02.2026 (RUD-10, RUD-11) show that they took the credit as shown in the ISD invoices without checking it;

7. AND WHEREAS the correct distribution under Rule 39(1), worked in Annexure-A, is Rs.17,04,000/- to Unit-A, Rs.4,72,000/- to Unit-B and Rs.3,24,000/- to Unit-C per month, against the actual distribution of Rs.9,22,250/-, Rs.9,22,250/- and Rs.7,90,500/-, which resulted in excess distribution of Rs.4,50,250/- per month to Unit-B and Rs.4,66,500/- per month to Unit-C, i.e. Rs.27,01,500/- and Rs.27,99,000/- in the six months (total Rs.55,00,500/-). Unit-A received Rs.7,81,750/- per month less than its entitlement, which is not set off against the excess of the others;

8. AND WHEREAS the returns and credit ledgers of Unit-B and Unit-C (RUD-12) show that the credit distributed to them was availed in Table 4(A)(4) of their FORM GSTR-3B and utilised in full against their output tax on the dates of the returns in Annexure-A, so that the integrated tax credit of Rs.27,01,500/- and Rs.27,99,000/- appears to have been wrongly availed and utilised by Unit-B and Unit-C;

9. AND WHEREAS the distribution was made openly in FORM GSTR-6 and the units took the credit as shown by the ISD; no evidence has been found of fraud, wilful misstatement or suppression of facts to evade tax, and no person has been found to have retained the benefit at whose instance the distribution was made. The contravention appears to fall under Section 74A(5)(i) in the case of Unit-B and Unit-C, and Section 122(1A) is not invoked;

10. AND WHEREAS it thus appears that:

(a) the ISD has contravened Section 20 of the CGST Act, 2017 read with Rule 39(1) of the CGST Rules, 2017 (and the corresponding provisions of the MGST Act and Rules) by distributing credit in excess of the credit available, to a wrong recipient, and in a wrong ratio, and is liable to penalty under Section 122(1)(ix); and

(b) Unit-B and Unit-C received the excess credit, wrongly availed and utilised it, and the same is liable to be recovered from them under Section 21 read with Section 74A, with interest under Section 50(3) and Rule 88B(3) and penalty under Section 74A(5)(i);

NOW, THEREFORE

(1) M/s XXX Ltd., the Input Service Distributor, Mumbai, (2) M/s XXX Ltd., Unit-B, Bengaluru, and (3) M/s XXX Ltd., Unit-C, Chennai, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST, [•] Division, Mumbai Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the credit distributed by the ISD from April 2025 to September 2025 should not be held to have been distributed in contravention of Section 20 of the CGST Act, 2017 read with Rule 39 of the CGST Rules, 2017, resulting in excess distribution of Rs.55,00,500/- of integrated tax credit to Unit-B and Unit-C, as detailed in Annexure-A;

(ii) the excess credit of Rs.27,01,500/- distributed to Unit-B and Rs.27,99,000/- distributed to Unit-C should not be recovered from them (Noticees 2 and 3) under Section 21 read with Section 74A(1) of the CGST Act, 2017, Section 20 of the IGST Act, 2017 and the corresponding provisions of the Karnataka and Tamil Nadu GST Acts, 2017;

(iii) interest at the rate of 24% per annum under Section 21 read with Section 50(3) of the CGST Act, 2017 and Rule 88B(3), from the dates of utilisation shown in Annexure-A till payment, should not be recovered from Noticees 2 and 3 (Rs.8,02,309/- and Rs.8,31,264/- respectively up to 30.11.2026);

(iv) penalty of Rs.2,70,150/- on Unit-B and Rs.2,79,900/- on Unit-C, being ten per cent of the tax due, should not be imposed under Section 74A(5)(i) of the CGST Act, 2017/IGST Act, 2017 (without prejudice to the benefit of Section 74A(8)); and

(v) penalty of Rs.55,00,500/- (Rs.27,50,250/- under the CGST Act and Rs.27,50,250/- under the MGST Act), being an amount equivalent to the input tax credit distributed irregularly, should not be imposed on Noticee 1 (the ISD) under Section 122(1)(ix) of the CGST Act, 2017/MGST Act,

2017.

11. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticees (or authorised representatives) may appear in person or through counsel;
- attention of Noticees 2 and 3 is drawn to Section 74A(8) of the CGST Act, 2017, whereby, if the tax and interest are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable under Section 74A and all proceedings in respect of the said notice shall be deemed to be concluded;
- the ISD is advised to issue an ISD credit note and a fresh ISD invoice under Rule 39(2) and (3) to correct the distribution, including the shortfall to Unit-A; a copy of this notice is sent to Unit-A for information;
- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Registration certificate of the ISD (effective 01.04.2025) and FORM GSTR-6 for April to September 2025;

RUD-2: ISD invoices issued to the three units for April to September 2025;

RUD-3: FORM GST ADT-01 dated 12.01.2026 and audit report in FORM GST ADT-02 dated 05.03.2026;

RUD-4: Standard allocation key and turnover master extracted from the accounting software of the ISD;

RUD-5: Invoices of M/s AAA Technologies (ERP roll-out and managed service) and the contract with its site schedule;

RUD-6: Invoices of M/s BBB Learning (recruitment and training, Bengaluru campus);

RUD-7: Invoices of the club and of the caterer;

RUD-8: Turnover statements of the three units for FY 2023-24 and FY 2024-25;

RUD-9: Statement of Mr. P recorded under Section 70 on 10.02.2026;

RUD-10 and RUD-11: Statements of the finance heads of Unit-B and Unit-C recorded under Section 70 on 18.02.2026 and 19.02.2026;

RUD-12: FORM GSTR-3B (Table 4(A)(4)) and electronic credit ledgers of Unit-B and Unit-C for May to October 2025;

Annexure-A: Working of correct and actual distribution, the excess, utilisation dates and interest [as per the tables in Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Mumbai Commissionerate

Copy to: (1) The Commissioner, Mumbai CGST Commissionerate; (2) the Deputy/Assistant Commissioners, CGST, having jurisdiction over Unit-B (Bengaluru) and Unit-C (Chennai); (3) Unit-A, Ahmedabad (for information and rectification of the shortfall).

Drafting note (not part of the notice):

- *The addressees, jurisdictional officers, F. No./DIN, GSTINs, order of assignment and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. M/s AAA Technologies, M/s BBB Learning and the persons named are fictional.*
- ***Teaching point - the Section 21 route and who pays.*** *An ISD does not pay the tax for the excess it has distributed: Section 21 recovers it from the recipients, determined as for any other tax under Section 73/74/74A. The ISD is penalised separately under Section 122(1)(ix). Note that the recipients here took nothing on their own initiative - the excess was handed to them. Compare Exercise-08/09 (blocked credit taken by the taxpayer himself), Exercise-07 (credit taken in excess of GSTR-2B) and Exercise-47 (transactions between distinct registrations of the same company).*
- ***Recipient by recipient, no set-off.*** *Unit-A was short-distributed by Rs.7,81,750/- a month. The excess of Unit-B and Unit-C is nevertheless demanded in full, since Section 21 speaks of the excess credit 'distributed' to 'such recipients'. The short-distribution is cured by the ISD (Rule 39(2)): an ISD credit note and an ISD invoice to the entitled recipient. The time limit of Section 16(4) for the recipient to avail the credit has to be watched.*
- ***Law applied from 01.04.2025.*** *Section 20 as amended says 'shall' (ISD distribution is compulsory) and the conditions have moved to Rule 39(1). For distributions up to 31.03.2025 the earlier Section 20(2)(a)-(e) would be cited and the demand would be under Section 73/74 (up to FY 2023-24) or 74A (FY 2024-25).*
- ***Where the notice goes.*** *A single notice is drawn up because it is the clearest teaching model, but the point in Part B (item 8) must be settled before issue: a notice to a recipient is to be issued by its proper officer, and a notice that has not been issued by the proper officer is open to challenge. If the case is split, each notice should carry the common facts and only its own recipient's demand. No decided case has been cited, since none has been verified.*
- ***Fraud or non-fraud?*** *On the evidence (openly reported distributions, a software default, units taking the credit as shown) only Section 74A(5)(i) is proposed for the recipients. If emails showed that a person decided to load the credit to a unit to reduce cash tax, the charge would move to Section 74A(5)(ii) and Section 122(1A) would be examined for that person.*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Deputy/Assistant Commissioner: above Rs.10 lakh and up to Rs.1 crore). Here the integrated tax demanded in the notice is Rs.55,00,500/-, i.e. within that limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 73

ITC on taxes that are not 'input tax' - Basic Customs Duty, Social Welfare Surcharge and compensation cess taken as integrated tax credit - Section 2(62), Section 16(1) and Section 11 of the Compensation Act

Exercise 73: ITC on taxes that are not 'input tax' - Basic Customs Duty, Social Welfare Surcharge and compensation cess taken as integrated tax credit - Section 2(62), Section 16(1) and Section 11 of the Compensation Act

Situation in Brief:

1. M/s XXX Auto Components Pvt. Ltd., a registered manufacturer of forged and machined automobile components at YYYY, Sriperumbudur, Kancheepuram District, Tamil Nadu (Chief Financial Officer: Mr. Z; Accounts Manager: Mr. Q), supplies its components to automobile manufacturers in Tamil Nadu, Maharashtra and Gujarat (about 70% of its supplies are inter-State) and has no supply on which compensation cess is leviable. Until March 2025 it bought its steam coal for its captive boiler, and its machine spares and die steel, from Indian importers. From April 2025 it began to import them directly, and it has filed FORM GSTR-3B monthly, on the due date, for every month.

2. Data analytics of the Directorate General of Analytics and Risk Management showed a mismatch between the amount shown in Table 4(A)(1) of the FORM GSTR-3B of the company (import of goods) and the integrated tax shown against the bills of entry in the table 'IMPG - import of goods from overseas' of its FORM GSTR-2B, for each of the months from April to August 2025. A notice in FORM GST ASMT-10 dated 05.01.2026 was issued under Section 61 of the CGST Act, 2017 read with Rule 99. The reply dated 25.01.2026 admitted the mismatch and stated that the whole of the customs duty paid on imports is claimed in the 'import' row since the ERP template treats it as one 'import duty credit'. A summons dated 10.02.2026 was then issued to Mr. Z under Section 70 to produce the bills of entry, the import ledger, the electronic credit ledger and the file of e-mails of the accounts department relating to the import credit.

3. The six bills of entry produced (the data on ICEGATE matches) show the following amounts, assessed to duty on the dates indicated, under the heads shown. Basic Customs Duty (BCD) and Social Welfare Surcharge (SWS) are customs duties; integrated tax (IGST) is levied on the imports under Section 5 of the IGST Act, 2017 read with Section 3(7) of the Customs Tariff Act, 1975, and compensation cess has been levied on the coal imported. The goods were used in the factory of the company for the manufacture of its components.

Bill of entry (BoE)	BCD (Rs.)	SWS (Rs.)	IGST (Rs.)	Compensation cess (Rs.)
BoE 2145871 dt 15.04.2025 - machine spares (assessable value Rs.76,00,000)	7,60,000	76,000	15,18,480	-
BoE 2161309 dt 28.04.2025 - steam coal, 6,000 MT (assessable value Rs.4,80,00,000)	12,00,000	1,20,000	24,66,000	24,00,000
BoE 2203455 dt 12.05.2025 - die steel (assessable value Rs.1,04,00,000)	10,40,000	1,04,000	20,77,920	-
BoE 2288140 dt 26.06.2025 - steam coal, 5,000 MT (assessable value Rs.4,00,00,000)	10,00,000	1,00,000	20,55,000	20,00,000
BoE 2341776 dt 18.07.2025 - machine parts (assessable value Rs.1,22,00,000)	12,20,000	1,22,000	24,37,560	-
BoE 2392208 dt 21.08.2025 - steam coal, 4,000 MT (assessable value Rs.3,20,00,000)	8,00,000	80,000	16,44,000	16,00,000
TOTAL	**60,20,000**	**6,02,000**	**1,21,98,960**	**60,00,000**

4. The FORM GSTR-2B of each month shows, against each bill of entry, only the integrated tax and the compensation cess; the BCD and the SWS do not appear in it. The GSTR-3B of the company shows nothing in the cess column of Table 4(A)(1) for any month, and the figure in the integrated tax column is as follows:

Month	IGST per GSTR-2B (IMPG) (Rs.)	IGST declared in Table 4(A)(1) of GSTR-3B (Rs.)	Difference (Rs.)	GSTR-3B filed on
April 2025	39,84,480	85,40,480	45,56,000	20.05.2025
May 2025	20,77,920	32,21,920	11,44,000	20.06.2025
June 2025	20,55,000	51,55,000	31,00,000	20.07.2025
July 2025	24,37,560	37,79,560	13,42,000	20.08.2025
August 2025	16,44,000	41,24,000	24,80,000	20.09.2025
TOTAL	**1,21,98,960**	**2,48,20,960**	**1,26,22,000**	

5. The electronic credit ledger shows that in each month the integrated tax credit (opening balance, if any, and the credit of the month) was fully utilised in the GSTR-3B of the month against the integrated tax payable on the inter-State supplies of the company, and that the credit balance at the end of each month was nil. The company has not reversed any amount.

6. The e-mail file produced includes an e-mail dated 06.05.2025 from Mr. Q to Mr. Z, with the subject 'April imports - credit', reading in part: 'Cess credit of Rs.24,00,000/- on the two coal BoEs will lie idle in our ledger because we have no cess liability and cess credit cannot be used for GST. I have therefore added the cess to the IGST figure in the April 3B, along with BCD and SWS as per the import template. Please confirm.' Mr. Z replied on the same day: 'Ok, proceed, do the same for all coal BoEs.' The same method was used in the June and August returns.

7. In his statement recorded on 24.02.2026 under Section 70, Mr. Z stated that the company had not been importing before April 2025; that the ERP consultant set the import template to take the total duty on the BoE as credit; that he had never examined the template; that he had approved the cess entry because he understood that the cess credit was 'in any case the company's credit and the Government loses nothing'; that he knew that cess credit could not be set off against GST, as the portal does not allow it; and that he was ready to pay the amounts if the department so determined.

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Auto Components Pvt. Ltd. (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Auto Components Pvt. Ltd. (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Auto Components Pvt. Ltd., calling upon the company to show cause as to why action should not be taken against it, while listing the proposed action.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX Auto Components Pvt. Ltd.

***

SUGGESTED SOLUTION

(Scrutiny under Section 61, inquiry on summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Auto Components Pvt. Ltd., Chennai CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Integrated GST Act, 2017 [IGST Act], the Tamil Nadu GST Act, 2017 [TNGST Act], the Goods and Services Tax (Compensation to States) Act, 2017 [Compensation Act] and the Rules made thereunder):

1. **Section 16(1) read with Section 2(62) and Section 2(63) of the CGST Act, 2017 - credit of BCD and SWS.** Section 16(1) entitles a registered person to take credit of 'input tax' charged on supplies to him. Section 2(62) defines 'input tax' as the central tax, State tax, integrated tax or Union territory tax charged on a supply, and includes the integrated tax charged on the import of goods and the tax payable under reverse charge, but not the tax paid under the composition levy. Section 2(63) makes input tax credit the credit of 'input tax'. BCD and SWS are customs duties, not a tax under the GST Acts; they are not 'input tax', and no credit of them can be taken, whatever the template of the company's software may say. The credit taken for BCD and SWS, Rs.66,22,000/-, is thus not admissible at all.
2. **Section 11 of the Compensation Act (proviso to Section 11(2)), Section 49 of the CGST Act, 2017 and Rule 88A of the CGST Rules, 2017 - cess credit used against IGST.** The compensation cess paid on the import of coal is a levy for which the credit provisions of the CGST/IGST Acts are applied by Section 11(1)/(2) of the Compensation Act, but the proviso to Section 11(2) allows the input tax credit of cess to be utilised only towards payment of the cess on supply of goods and services. The company entered the cess, Rs.60,00,000/-, in the integrated tax column of Table 4(A)(1); the cess credit was thereby changed into integrated tax credit, which was utilised in payment of integrated tax (Rule 88A: credit of integrated tax is first used for integrated tax). The credit of IGST that the company was entitled to is the IGST shown in the bills of entry and in GSTR-2B, Rs.1,21,98,960/-.
3. **Section 41(1) of the CGST Act, 2017** - the returns of the company for April, May, June, July and August 2025 contain a wrong declaration of credit in Table 4(A)(1). The credit which a registered person may take, as self-assessed in the return, is the eligible input tax credit, i.e. one allowed by Section 16 and not otherwise barred.

Note: *This is not a case of blocked credit (Exercise-08/09/46): in those cases the tax is 'input tax' but Section 17(5) blocks the credit, while BCD and SWS fall outside Section 2(62) altogether. It is not a case of credit taken twice (Exercise-43): each amount was claimed once, but under the wrong head. It is not an ordinary mismatch with GSTR-2B (Exercise-07): the mismatch is fully explained by the three heads of Table 4 (BCD, SWS and cess). The cess credit in the cess head would have been available to the company, subject to the Compensation Act, but cess credit is not credit of integrated tax.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the company to the following action under the CGST Act, 2017 (read with Section 20 of the IGST Act, 2017, Section 11 of the Compensation Act and the corresponding provisions of the TNGST Act, 2017):

1. Route - determination of the ITC wrongly availed and utilised under **Section 74A(1)** of the CGST Act, 2017 (credit of integrated tax, so read with Section 20 of the IGST Act). The returns are of April to August 2025, i.e. FY 2025-26, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so a notice may be issued up to 30.06.2030 [Section 74A(2)]; the order is due within twelve months of the notice, extendable by six months [Section 74A(7)].
2. Amount - integrated tax credit of Rs.1,26,22,000/- wrongly availed and utilised, being BCD Rs.60,20,000/-, SWS Rs.6,02,000/- and compensation cess Rs.60,00,000/-. The demand is not reduced by the cess credit to which the company would have been entitled in the cess head; that credit could be

used only against cess, of which the company has no liability, and so has no revenue effect. The company may, however, ask the adjudicating authority to take that credit into account; and whether, and how, it may be re-credited is a matter for the proper officer after verification (subject to Section 16(4), to the extent it applies to a bill of entry).

3. Interest - **Section 50(3)** read with **Rule 88B(3)** at 24% per annum on the credit wrongly availed and utilised, from the date of utilisation (the date of the GSTR-3B on which the credit fell below the wrongly availed amount) till payment. As the opening balance in each month was nil, the date of utilisation is the date of the return. Up to 30.11.2026 it is Rs.42,09,949/- (on BCD and SWS Rs.22,14,201/-; on cess Rs.19,95,748/-).

4. Penalty - two tiers are proposed in one notice, and the reason for each must appear in the notice. (a) On the credit of BCD and SWS, Rs.66,22,000/-, **Section 74A(5)(i)**: ten per cent, Rs.6,62,200/-. The mistake arose from an ERP template which treated the whole duty as 'credit', as under the earlier excise regime; the company was importing for the first time; the first reply admitted the entry; no one looked at the template. These facts do not show intent. The concession of Section 74A(8) is available. (b) On the cess credit moved to the integrated tax column, Rs.60,00,000/-, **Section 74A(5)(ii)**: a penalty equal to the credit, Rs.60,00,000/-, for wilful misstatement and suppression of facts to evade tax. The evidence is the e-mail of 06.05.2025 and Mr. Z's approval 'do the same for all coal BoEs', and his statement that he knew the cess credit could not be set off against GST. The act of changing the head was deliberate. It also affected the revenue, because the output integrated tax was discharged with a credit that could not lawfully be used for it. The concessions of Section 74A(9) (15% before the notice, 25% within sixty days of the notice, 50% within sixty days of the order, in addition to tax and interest) are available for this part.

5. Specific offence penalties - Section 122(1)(vii) is not invoked: that clause is about credit taken without actual receipt of goods or services, and the goods were received. As penalty is proposed under Section 74A(5) for the same default, no separate penalty is proposed under Section 122 or Section 125 [Section 75(13)]; Section 126 does not help the company, since the breach has a tax effect.

6. Persons - the company is the only person charged. The e-mails show that Mr. Z approved the cess entry, but a penalty on him in his personal capacity under Section 122(3)(a) (abetment) is not proposed as the act was done by him as the CFO for the company; it may be reconsidered if the adjudication evidence shows personal gain.

7. Recovery - under Sections 78 and 79. The credit has been fully utilised, so the demand is to be paid in cash; the ledger has nil balance.

8. Prosecution - Section 132 has been considered and is not proposed: the goods were received and used, no invoice of a non-existent supplier is involved (clause (c) of Section 132(1) is not made out), and the case is one of wrong heads of credit. The question may be revisited if, in adjudication, an intention to evade tax on a larger scale emerges.

Illustrative working of the wrongly availed credit, interest (24%) and penalty:

Month (GSTR-3B filed on)	BCD + SWS (Rs.)	Cess shown as IGST (Rs.)	Interest 24% to 30.11.2026 (Rs.)
April 2025 (20.05.2025, 559 days)	21,56,000	24,00,000	16,74,611
May 2025 (20.06.2025, 528 days)	11,44,000	0	3,97,172
June 2025 (20.07.2025, 498 days)	11,00,000	20,00,000	10,15,101
July 2025 (20.08.2025, 467 days)	13,42,000	0	4,12,086
August 2025 (20.09.2025, 436 days)	8,80,000	16,00,000	7,10,979
TOTAL	**66,22,000**	**60,00,000**	**42,09,949**

Penalty	Basis	Amount (Rs.)
BCD and SWS credit	Section 74A(5)(i): 10% of 66,22,000	6,62,200
Cess credit used as IGST	Section 74A(5)(ii): equal to 60,00,000	60,00,000
TOTAL		**66,62,200**

Basis: *Each amount is taken from the bills of entry. The interest is simple, at 24%, on the credit utilised on the date of each return, on the actual number of days to 30.11.2026. The order of utilisation is Section 49 read with Rule 88A: integrated tax credit is used first for integrated tax; central tax and State tax credit can be used for integrated tax only after the integrated tax credit is exhausted. The credit of cess can be used only for the payment of cess [Section 11(2) of the Compensation Act, proviso].*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Auto Components Pvt. Ltd., having its factory at YYYY, Sriperumbudur, Tamil Nadu, is hereby called upon to show cause in writing to the Joint/Additional Commissioner, CGST, Chennai [•] Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the amounts of Basic Customs Duty (Rs.60,20,000/-) and Social Welfare Surcharge (Rs.6,02,000/-) shown in the bills of entry listed in Annexure-A, not being 'input tax' as defined in Section 2(62) of the CGST Act, 2017, should not be held to have been wrongly availed as input tax credit in Table 4(A)(1) of its FORM GSTR-3B for April to August 2025, in contravention of Section 16(1) read with Section 2(62) and 2(63) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017;

(ii) the compensation cess of Rs.60,00,000/- paid on the imported coal, the credit of which can be utilised only towards payment of cess under the proviso to Section 11(2) of the Compensation Act, should not be held to have been wrongly availed as integrated tax credit and utilised for payment of integrated tax, in contravention of Section 16(1) of the CGST Act, 2017, Section 49 read with Rule 88A of the CGST Rules, 2017 and Section 11 of the Compensation Act;

(iii) the integrated tax credit of Rs.1,26,22,000/- (Rupees One Crore Twenty-Six Lakh Twenty-Two Thousand only) so wrongly availed and utilised, as detailed in Annexure-A, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017;

(iv) interest at the rate of 24% per annum under Section 50(3) of the CGST Act, 2017 read with Rule 88B(3), from the dates of utilisation shown in Annexure-A till payment, should not be charged and recovered on the amount at (iii) above;

(v) penalty of Rs.6,62,200/- under Section 74A(5)(i) on the amount of Rs.66,22,000/- at (i) above (without prejudice to the benefit of Section 74A(8)), and penalty of Rs.60,00,000/- under Section 74A(5)(ii) on the amount of Rs.60,00,000/- at (ii) above (without prejudice to the benefit of Section 74A(9)), of the CGST Act, 2017/IGST Act, 2017 should not be imposed on it.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-CHN

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Joint/Additional Commissioner, CGST, Chennai [●] Commissionerate, Tamil Nadu

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017, read with Section 20 of the Integrated Goods and Services Tax Act, 2017, Section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 and the corresponding provisions of the Tamil Nadu Goods and Services Tax Act, 2017)

To,
M/s XXX Auto Components Pvt. Ltd. (GSTIN: [●]),
YYYY, Sriperumbudur, Kancheepuram District, Tamil Nadu.

(hereinafter referred to as 'the Noticee')

WHEREAS the Noticee is a registered manufacturer of forged and machined automobile components, with inter-State and intra-State supplies, and has no supply on which compensation cess is leviable. From April 2025 it imported steam coal, machine spares, die steel and machine parts directly, under the six bills of entry listed in Annexure-A (RUD-1), on which Basic Customs Duty (BCD), Social Welfare Surcharge (SWS), integrated tax (IGST) and, on the coal, compensation cess were paid as shown therein;

2. AND WHEREAS the data analytics of the DGARM showed a mismatch, for each month from April to August 2025, between the integrated tax declared in Table 4(A)(1) of the FORM GSTR-3B of the Noticee and the integrated tax shown against the bills of entry in the table IMPG of its FORM GSTR-2B (RUD-2); a notice in FORM GST ASMT-10 dated 05.01.2026 (RUD-3) was issued, and the Noticee, by its reply dated 25.01.2026 (RUD-4), admitted the mismatch and stated that the total duty paid on imports is claimed as credit in the import row;

3. AND WHEREAS the FORM GSTR-2B of each month contains, against each bill of entry, the integrated tax and the compensation cess, and does not contain BCD or SWS; and the integrated tax declared by the Noticee in the GSTR-3B exceeded the integrated tax per GSTR-2B by the amounts of BCD, SWS and (for the coal) compensation cess of the bills of entry of the month, as follows: April 2025 Rs.45,56,000/-; May 2025 Rs.11,44,000/-; June 2025 Rs.31,00,000/-; July 2025 Rs.13,42,000/-; August 2025 Rs.24,80,000/-; total Rs.1,26,22,000/-, the figure of cess in the GSTR-3B being nil in each month (RUD-2, RUD-5);

4. AND WHEREAS the electronic credit ledger of the Noticee (RUD-6) shows that the integrated tax credit, including the above excess, was utilised in full in each month on the date of the GSTR-3B against the integrated tax on inter-State supplies, the closing balance of each month being nil;

5. AND WHEREAS the e-mail dated 06.05.2025 from Mr. Q, Accounts Manager, to Mr. Z, CFO, and the reply of Mr. Z on the same day (RUD-7) show that the cess credit of Rs.24,00,000/- on the coal bills of entry of April 2025 was added to the integrated tax figure in the GSTR-3B so that it might not lie idle, 'along with BCD and SWS as per the import template', and that Mr. Z approved the same for all coal bills of entry; the cess credit was thus used for the payment of integrated tax, though the cess credit can be used only for payment of cess [proviso to Section 11(2) of the Compensation Act];

6. AND WHEREAS Mr. Z, in his statement recorded on 24.02.2026 under Section 70 of the CGST Act, 2017 (RUD-8), stated that the company had not imported before April 2025; that the ERP consultant set the import template to take the total duty as credit and he never examined it; that he approved the cess entry as the cess credit was 'in any case the company's credit'; and that he knew that cess credit could not be set off against GST, as the portal does not allow it;

7. AND WHEREAS Section 16(1) of the CGST Act, 2017 allows a registered person credit of 'input tax', which Section 2(62) defines as the central tax, State tax, integrated tax or Union territory tax charged on a supply (including integrated tax charged on import of goods) and the tax payable under reverse

charge, other than the composition levy; BCD and SWS are customs duties and are not input tax, so that the credit of Rs.66,22,000/- for BCD and SWS was not admissible; and the credit of compensation cess of Rs.60,00,000/- could be utilised only for the payment of cess, but was shown as, and used as, integrated tax credit;

8. AND WHEREAS the BCD and SWS credit appears to have been taken by reason of an error in the ERP template and a first-time import by the Noticee, and not with intent to evade tax, so that the penalty for this part of the default is attracted under Section 74A(5)(i) of the CGST Act, 2017; whereas the cess credit appears to have been deliberately shown as integrated tax credit on the instructions of the CFO, with knowledge that it could not be used for the payment of GST, so that for this part the default appears to be by reason of wilful misstatement and suppression of facts to evade tax, attracting penalty under Section 74A(5)(ii) of the CGST Act, 2017;

9. AND WHEREAS it thus appears that the Noticee has contravened Section 16(1) read with Sections 2(62) and 2(63) of the CGST Act, 2017, Section 49 and Rule 88A of the CGST Rules, 2017 and Section 11 of the Compensation Act, 2017 (and the corresponding provisions of the IGST Act and the TNGST Act), and is liable to demand of the credit under Section 74A, interest under Section 50(3) and Rule 88B(3), and penalty under Section 74A(5)(i) and (ii);

NOW, THEREFORE

M/s XXX Auto Components Pvt. Ltd. is hereby called upon to show cause in writing to the Joint/Additional Commissioner, CGST, Chennai [•] Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the amounts of Basic Customs Duty (Rs.60,20,000/-) and Social Welfare Surcharge (Rs.6,02,000/-) shown in the bills of entry listed in Annexure-A, not being 'input tax' as defined in Section 2(62) of the CGST Act, 2017, should not be held to have been wrongly availed as input tax credit in Table 4(A)(1) of its FORM GSTR-3B for April to August 2025, in contravention of Section 16(1) read with Section 2(62) and 2(63) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017;

(ii) the compensation cess of Rs.60,00,000/- paid on the imported coal, the credit of which can be utilised only towards payment of cess under the proviso to Section 11(2) of the Compensation Act, should not be held to have been wrongly availed as integrated tax credit and utilised for payment of integrated tax, in contravention of Section 16(1) of the CGST Act, 2017, Section 49 read with Rule 88A of the CGST Rules, 2017 and Section 11 of the Compensation Act;

(iii) the integrated tax credit of Rs.1,26,22,000/- (Rupees One Crore Twenty-Six Lakh Twenty-Two Thousand only) so wrongly availed and utilised, as detailed in Annexure-A, should not be demanded and recovered from it under Section 74A(1) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017;

(iv) interest at the rate of 24% per annum under Section 50(3) of the CGST Act, 2017 read with Rule 88B(3), from the dates of utilisation shown in Annexure-A till payment, should not be charged and recovered on the amount at (iii) above;

(v) penalty of Rs.6,62,200/- under Section 74A(5)(i) on the amount of Rs.66,22,000/- at (i) above (without prejudice to the benefit of Section 74A(8)), and penalty of Rs.60,00,000/- under Section 74A(5)(ii) on the amount of Rs.60,00,000/- at (ii) above (without prejudice to the benefit of Section 74A(9)), of the CGST Act, 2017/IGST Act, 2017 should not be imposed on it.

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;

- attention is drawn to the benefits under Section 74A(8) in respect of the amount at (i) above, and under Section 74A(9) in respect of the amount at (ii) above, whereby, on payment of tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said amounts are deemed to be concluded;
- the Noticee may make a representation as to the credit of compensation cess, which it may be entitled to take in the cess head, and the same will be considered at adjudication; it does not reduce the demand under (iii) above;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Six bills of entry (assessed copies) with the ICEGATE data extracts;

RUD-2: FORM GSTR-3B (Table 4(A)(1)) and FORM GSTR-2B (IMPG) for April to August 2025;

RUD-3: Notice in FORM GST ASMT-10 dated 05.01.2026;

RUD-4: Reply of the Noticee dated 25.01.2026;

RUD-5: Import ledger and ERP import template produced by the Noticee;

RUD-6: Electronic credit ledger of the Noticee for April to September 2025;

RUD-7: E-mails dated 06.05.2025 between Mr. Q and Mr. Z (with the later e-mails for June and August 2025);

RUD-8: Statement of Mr. Z recorded under Section 70 on 24.02.2026, with the summons dated 10.02.2026;

Annexure-A: Bill-of-entry-wise and month-wise statement of BCD, SWS, IGST and cess, credit wrongly availed and utilised, and interest [as per the tables in the Situation and Part B].

(_____)
Joint/Additional Commissioner, CGST
Chennai [•] Commissionerate

Copy to: The Principal Commissioner, Chennai [•] CGST Commissionerate, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional officer, F. No./DIN, bill of entry numbers and dates shown in square brackets/blanks or used in the tables are illustrative placeholders and must be completed with the correct particulars before issue.*
- ***Teaching point - head-wise eligibility and cross-utilisation.*** *The question to ask, for every duty on a bill of entry, is whether it is 'input tax' within Section 2(62). IGST on imports is; BCD and SWS are not (they never reach GSTR-2B); compensation cess is credit only for cess. Where the data of the three heads are put together in one column, the taxpayer has taken wrong credit even though the total on the bill of entry is correct. Compare Exercise-08/09/46 (blocked credit under Section 17(5): the tax is input tax, but the credit is blocked), Exercise-43 (credit availed twice) and Exercise-07 (credit more than GSTR-2B).*
- ***Portal and cross-head use.*** *The electronic credit ledger keeps cess credit in a separate head, which cannot be debited for GST. The cess credit was therefore not literally 'debited' against GST: it was shown in the IGST column of Table 4(A)(1) so that it became IGST credit. The statements and e-mails are therefore the central evidence of the notice and must be quoted, as the Master Chart (Key Note 3) requires.*
- ***Two penalty tiers in one notice.*** *The BCD/SWS part is penalised under Section 74A(5)(i) and the cess part under Section 74A(5)(ii), each with its own concession (Section 74A(8) and 74A(9)). The reasons for the difference are in the facts, and it is for the officer to state them in the notice; the adjudicating authority may differ on review of the evidence.*

- ***Interest rate.*** *Interest at 24% under Section 50(3)/Rule 88B(3) is charged because the credit was wrongly availed AND utilised, and runs from the date of utilisation (here the date of the return), not from the date of availment.*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Additional/Joint Commissioner: above Rs.1 crore). Here the demand of integrated tax is Rs.1,26,22,000/-, above that limit. The same exercise, if the demand were less than Rs.1 crore, would go to a Deputy/Assistant Commissioner.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 74

Input tax credit on stock claimed on registration under Section 18(1)(a) - invoices older than one year, goods not held in stock on the stated date and capital goods - Section 18(2) and Rule 40

Exercise 74: Input tax credit on stock claimed on registration under Section 18(1)(a) - invoices older than one year, goods not held in stock on the stated date and capital goods - Section 18(2) and Rule 40

Situation in Brief:

1. M/s XXX, a proprietary concern of Mr. Z, YYYY, Cuttack, Odisha, trades in PVC pipes and fittings (HSN 3917, taxable at 18% as per the invoices) and was not registered under GST. Its aggregate turnover for FY 2025-26, as per its own sales register, crossed the threshold of Rs.40 lakh for suppliers of goods on 14.08.2025, from which date it became liable to be registered under Section 22(1) of the CGST Act, 2017. Mr. Z applied for registration (FORM GST REG-01) on 09.09.2025, i.e. within thirty days from the date of liability, and registration was granted on 22.09.2025 with effect from 14.08.2025.

2. On 06.01.2026 M/s XXX filed FORM GST ITC-01 under Section 18(1)(a) of the CGST Act, 2017 read with Rule 40, declaring 'inputs held in stock on 13.08.2025' and claiming input tax credit of Rs.4,58,100/- (central tax Rs.2,29,050/- and Odisha State tax Rs.2,29,050/-) on eleven purchase invoices from registered suppliers in Odisha, with a certificate of a chartered accountant (the claim exceeds Rs.2 lakh). The credit was taken in the electronic credit ledger on filing. It was utilised towards output tax in FORM GSTR-3B as follows: Rs.1,60,000/- on 20.01.2026 (return for December 2025), Rs.1,50,000/- on 20.02.2026 (January 2026) and Rs.90,000/- on 20.03.2026 (February 2026); the balance of Rs.58,100/- is lying in the ledger. The ledger had no other balance in this period.

3. The ITC-01 was selected for verification. A summons dated 02.03.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared on 12.03.2026 and produced (a) the purchase register and the eleven purchase invoices, (b) the computerised stock register, which was written up only at month-end, (c) the sales register and cash memo books for the period 01.04.2025 to 13.08.2025, (d) the lorry receipts of the suppliers, and (e) the CA certificate. On 18.03.2026 officers visited the godown at YYYY under an authorisation of the Joint Commissioner under Section 71 and recorded the physical stock, which was then reconciled backwards, with the sales made and the goods received after 13.08.2025, to the stock on the night of 13.08.2025 (inspection report and reconstruction sheet).

4. The statement of Mr. Z was recorded on 25.03.2026 under Section 70, wherein he stated that the ITC-01 was prepared by his accountant from the purchase register 'for all purchases of the last two years'; that no physical stock-taking was done on 13.08.2025 or on any other date before filing; that he did not tell the accountant that part of the goods had already been sold; that he gave to the CA the purchase register and the stock register only, and the certificate was issued on that basis; that invoice EP/0391 related to goods of which a part was sold from time to time, and invoice MP/2311 dated 11.08.2025 was of goods which were delivered to him only on 21.08.2025; that invoice COS/77 was for display racks and a computer; that he had no knowledge that credit cannot be taken on invoices older than one year and on capital goods; and that he is ready to pay if the credit is held not admissible. He admitted that his sales register shows the sales mentioned at serial C1 and D1 below.

5. The invoices on which credit was claimed, with the findings of the verification, are as follows (the date of liability is 14.08.2025, so the stock date is 13.08.2025; all invoices are at 18%, 9% central tax and 9% Odisha State tax):

Ref	Invoice no. and date - supplier	Taxable value (Rs.)	ITC claimed (Rs.)	Finding of verification
A1	EP/118 dt. 12.02.2025 - Eastern Polymers, Jajpur	2,40,000	43,200	Goods found in stock on 13.08.2025 (reconstruction)
A2	UP/0472 dt. 03.04.2025 - Utkal Plastics, Bhubaneswar	3,10,000	55,800	In stock on 13.08.2025
A3	MP/0391 dt. 22.06.2025 - Mahanadi Pipes, Cuttack	4,50,000	81,000	In stock on 13.08.2025
A4	RF/1187 dt. 19.07.2025 - Rourkela Fittings, Rourkela	1,80,000	32,400	In stock on 13.08.2025

Ref	Invoice no. and date - supplier	Taxable value (Rs.)	ITC claimed (Rs.)	Finding of verification
B1	BP/114 dt. 14.03.2024 - Berhampur Polymers, Berhampur	2,00,000	36,000	Invoice 17 months old on 13.08.2025
B2	EP/1032 dt. 27.07.2024 - Eastern Polymers, Jajpur	1,60,000	28,800	Invoice more than 12 months old (1 year expired 27.07.2025)
B3	BPS/0219 dt. 05.08.2024 - Balasore Pipes, Balasore	1,10,000	19,800	Invoice more than 12 months old (1 year expired 05.08.2025)
C1	UP/0288 dt. 08.05.2025 - Utkal Plastics, Bhubaneswar	2,70,000	48,600	Goods sold on bills dated 20.05.2025 to 28.07.2025; no stock on 13.08.2025
C2	MP/2311 dt. 11.08.2025 - Mahanadi Pipes, Cuttack	1,25,000	22,500	Goods received on 21.08.2025 (LR); not in stock on 13.08.2025
D1	EP/0391 dt. 25.04.2025 - Eastern Polymers, Jajpur	3,00,000	54,000	Goods of Rs.90,000/- in stock; goods of Rs.2,10,000/- sold between 10.06.2025 and 30.07.2025
E1	COS/77 dt. 10.05.2025 - Cuttack Office Systems, Cuttack	2,00,000	36,000	Display racks and computer (capital goods)
TOTAL	**Eleven invoices**	**25,45,000**	**4,58,100**	

6. The stock held on 13.08.2025 as reconstructed by the department is as follows: invoices A1 to A4 in full (taxable value Rs.11,80,000/-), and goods of Rs.90,000/- out of invoice D1; no stock out of invoices B1 to B3, C1 and C2; and invoice E1 is of capital goods. The total value of stock eligible for credit is therefore Rs.12,70,000/-, on which the credit is Rs.2,28,600/-. Mr. Z has been unable to produce any physical count, stock sheet, photographs, sales or any other contemporaneous record to show that the goods at B, C and D1 (balance) were in stock on 13.08.2025. All the facts were disclosed in the books produced voluntarily; no concealment, forged document or false supplier is alleged.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

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SUGGESTED SOLUTION

(Verification of FORM GST ITC-01, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Bhubaneswar CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Odisha Goods and Services Tax Act, 2017 [OGST Act] and the Rules made under the two Acts):

1. **Section 18(2) of the CGST Act, 2017** - credit of Rs.84,600/- (invoices B1 to B3, taxable value Rs.4,70,000/-) was taken in respect of supplies for which more than one year had expired from the date of issue of the tax invoice. Section 18(2) bars the credit under sub-section (1) after the expiry of one year from the date of issue of the tax invoice. These three invoices are dated 14.03.2024, 27.07.2024 and 05.08.2024; the year expired on 14.03.2025, 27.07.2025 and 05.08.2025, i.e. before the stock date (13.08.2025), the date of liability (14.08.2025), the date of registration (22.09.2025) and the date of filing of ITC-01 (06.01.2026). The invoices are therefore barred whichever of these dates is treated as the date up to which the one-year period runs; the point need not be decided in this case (see Drafting note).
2. **Section 18(1)(a) of the CGST Act, 2017 read with Rule 40(1)** - credit under Section 18(1)(a) is allowed only on inputs held in stock, and inputs contained in semi-finished or finished goods held in stock, *on the day immediately preceding the date from which the person becomes liable to pay tax.* The credit of Rs.1,08,900/- was taken on goods which were not in stock on 13.08.2025: invoices C1 (goods sold earlier, Rs.2,70,000/-), C2 (goods received on 21.08.2025, Rs.1,25,000/-) and the part of invoice D1 sold earlier (Rs.2,10,000/-). The declaration in ITC-01 of the stock held on 13.08.2025 was not supported by any record of the stock on that day.
3. **Section 18(1)(a) read with Section 2(19) and Section 2(59)** - credit of Rs.36,000/- was taken on invoice E1 (display racks and a computer, taxable value Rs.2,00,000/-), which are capital goods. Section 18(1)(a) allows credit on inputs only (stock, semi-finished or finished goods); credit on capital goods is available only under Section 18(1)(c) and (d), which have no application to a person who has applied for registration under Section 22.
4. **Rule 40(1)(b) of the CGST Rules, 2017** - the declaration in FORM GST ITC-01 must be filed within thirty days from the date of becoming eligible to avail the credit, or within such further period as the Commissioner may extend by notification. Even if time is counted from the date of grant of registration (22.09.2025), thirty days expired on 22.10.2025; the ITC-01 was filed on 06.01.2026, 76 days late. No extension of time applicable to the Noticee has been identified.

Note: *The CA certificate under Rule 40(1)(d) was issued without any verification of the physical stock on 13.08.2025; this is an observation, and no action against the certifying professional is proposed in this notice. The credit on invoices A1 to A4 and on the Rs.90,000/- out of invoice D1 (total Rs.2,28,600/-) is admissible: the invoices are within one year, the goods were in stock on 13.08.2025 and the registration was applied for within thirty days of the date of liability. Section 16(2)(b) (receipt of goods) and Section 122(1)(vii) are not attracted, because all the goods were actually received (invoice C2 on 21.08.2025); the defect is the non-availability of credit under Section 18, not the non-receipt of goods.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the OGST Act, 2017):

1. Registration - the registration is valid and the Noticee has been granted registration with effect from 14.08.2025. No action is called for on registration. The effective date was the date of liability because the application was made within thirty days [Section 25(7)(a)]; had it been made later, Section 18(1)(a) would not have been available at all.
2. Determination and recovery of the ITC wrongly availed - under **Section 74A(1) of the CGST Act, 2017**

(and the OGST Act). The credit was taken on 06.01.2026, in FY 2025-26, for which Section 74A is the demand provision [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so a notice may be issued up to 30.06.2030 [Section 74A(2)]; the order is due within twelve months of the notice [Section 74A(7)], extendable by six months. The amount demanded is Rs.2,29,500/- (central tax Rs.1,14,750/- and Odisha State tax Rs.1,14,750/-), of which Rs.1,71,400/- was utilised and Rs.58,100/- is unutilised and is to be disallowed by debit of the electronic credit ledger.

3. Interest - under **Section 50(3)** at the notified rate of 24% per annum on ITC wrongly availed and utilised, worked out as per Rule 88B (the wrongly availed credit is treated as utilised when the ledger balance falls below the amount of wrongly availed credit), from the date of utilisation to the date of payment. The credit was utilised wrongly to the extent of Rs.81,400/- on 20.02.2026 and Rs.90,000/- on 20.03.2026. Illustratively, up to 30.11.2026, interest is Rs.30,237/- (Rs.15,118/- under the CGST Act and Rs.15,119/- under the OGST Act). No interest under Section 50(3) is leviable on the unutilised Rs.58,100/-.

4. Penalty - under **Section 74A(5)(i)**, being a case other than fraud, wilful misstatement or suppression of facts: ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.11,475/- under each Act (total Rs.22,950/-). Why not Section 74A(5)(ii)? The Noticee produced the purchase and sales registers voluntarily, the sales which show that the goods at C1 and D1 were not in stock are in his own books, the ITC-01 was filed openly with a CA certificate, no false invoice or supplier is alleged, and the Noticee acted on the advice of his accountant on a technical provision (one year; capital goods; stock on a given day). The benefit of **Section 74A(8)** (nil penalty on payment of tax and interest within sixty days of the notice) is available to the Noticee.

5. Specific offence penalties - Section 122(1)(vii) is not proposed (goods were actually received; see Note in A). No separate penalty under Section 125 is proposed in view of Section 75(13); the default in the time-limit for ITC-01 (Rule 40) has no revenue effect of its own and, to that extent, would in any case call for the discipline of Section 126.

6. Late filing of ITC-01 and the admissible credit - the Rule 40 time-limit is argued by the Noticee as procedural. The department has not proposed to deny the admissible credit of Rs.2,28,600/- (invoices within one year and in stock) merely because ITC-01 was filed late; the lapse is recorded in the notice as a contravention, and the proper officer may take it into account when considering Section 126. The credit demanded is limited to that which is inadmissible on grounds of substance.

7. Recovery and balance in the ledger - the unutilised credit of Rs.58,100/- may be blocked under Rule 86A pending the order, if the proper officer has reason to believe that it has been ineligibly availed (the blocking lapses after one year); the confirmed demand is recoverable under Sections 78 and 79. The Noticee may, instead, deposit the tax and interest through FORM GST DRC-03 and inform the officer, under Section 74A(8).

8. Prosecution - not considered, there being no fraud and the amount being below the thresholds of Section 132(1).

Illustrative working of the credit admissible and the credit demanded (13.08.2025 is the stock date):

Ref	Position	ITC claimed (Rs.)	Admissible (Rs.)	Demanded (Rs.)
A1	Admissible	43,200	43,200	0
A2	Admissible	55,800	55,800	0
A3	Admissible	81,000	81,000	0
A4	Admissible	32,400	32,400	0
B1	Barred - Section 18(2)	36,000	0	36,000
B2	Barred - Section 18(2)	28,800	0	28,800
B3	Barred - Section 18(2)	19,800	0	19,800
C1	Not in stock	48,600	0	48,600
C2	Not in stock	22,500	0	22,500

Ref	Position	ITC claimed (Rs.)	Admissible (Rs.)	Demanded (Rs.)
D1	Part admissible	54,000	16,200	37,800
E1	Capital goods	36,000	0	36,000
TOTAL		**4,58,100**	**2,28,600**	**2,29,500**

Date of utilisation	Ledger balance after (Rs.)	Wrongly utilised (Rs.)	Days to 30.11.2026	Interest @24% (Rs.)
20.01.2026	2,98,100	Nil	-	Nil
20.02.2026	1,48,100	81,400	283	15,147
20.03.2026	58,100	90,000	255	15,090
TOTAL		**1,71,400**		**30,237**

Basis: *Total credit in the ledger Rs.4,58,100; wrongly availed credit Rs.2,29,500. After the utilisation of 20.01.2026 the balance (Rs.2,98,100) is still above the wrongly availed credit, so none of it is wrongly utilised. Interest is shown in total; it is divided equally between central tax and State tax (the heads are symmetrical here, but in practice the head-wise ledger must be used).*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Cuttack, Odisha, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Bhubaneswar CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.2,29,500/- (Central tax Rs.1,14,750/- and Odisha State tax Rs.1,14,750/-) taken by them through FORM GST ITC-01 filed on 06.01.2026 on invoices B1 to B3 (older than one year), C1, C2 and part of D1 (goods not held in stock on 13.08.2025) and E1 (capital goods), as detailed in Annexure-A, should not be held to be inadmissible under Section 18(1)(a) and Section 18(2) of the CGST Act, 2017/OGST Act, 2017 read with Rule 40, and should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the OGST Act, 2017;

(ii) the amount of Rs.58,100/- lying unutilised in their electronic credit ledger should not be disallowed and recovered by debit of the ledger, as part of the amount at (i) above;

(iii) interest at 24% per annum under Section 50(3) of the CGST Act, 2017/OGST Act, 2017 read with Rule 88B should not be charged and recovered on the wrongly availed credit utilised, being Rs.81,400/- from 20.02.2026 and Rs.90,000/- from 20.03.2026, till the date of payment;

(iv) a penalty of Rs.11,475/- (Central tax) and Rs.11,475/- (Odisha State tax), total Rs.22,950/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/OGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-BBSR

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Bhubaneswar CGST Commissionerate, Odisha

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Odisha Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN: [●]),
YYYY, Cuttack, Odisha.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX, a proprietary concern of Mr. Z, trades in PVC pipes and fittings (HSN 3917) at Cuttack. Its aggregate turnover in FY 2025-26 exceeded Rs.40,00,000/- on 14.08.2025, from which date it became liable to be registered under Section 22(1) of the CGST Act, 2017. It applied for registration on 09.09.2025, within thirty days of that date, and was granted registration on 22.09.2025 with effect from 14.08.2025 (RUD-1);

2. AND WHEREAS the Noticee filed FORM GST ITC-01 on 06.01.2026 under Section 18(1)(a) of the CGST Act, 2017 read with Rule 40 of the CGST Rules, 2017, declaring inputs held in stock on 13.08.2025 and claiming credit of Rs.4,58,100/- (central tax Rs.2,29,050/- and Odisha State tax Rs.2,29,050/-) on eleven invoices, with a CA certificate (RUD-2). The credit was taken in the electronic credit ledger and utilised in FORM GSTR-3B for December 2025, January 2026 and February 2026 (Rs.1,60,000/- on 20.01.2026, Rs.1,50,000/- on 20.02.2026 and Rs.90,000/- on 20.03.2026); the balance of Rs.58,100/- is lying in the ledger (RUD-3);

3. AND WHEREAS a summons dated 02.03.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z (RUD-4), in response to which he appeared on 12.03.2026 and produced the purchase register, the eleven purchase invoices, the stock register (written up only at month-end), the sales register and cash memo books for 01.04.2025 to 13.08.2025, the suppliers' lorry receipts and the CA certificate (RUD-5 to RUD-8); and the godown was inspected on 18.03.2026 under Section 71, the physical stock being reconciled backwards to the stock of 13.08.2025 with the sales made and goods received thereafter (RUD-9);

4. AND WHEREAS the statement of Mr. Z was recorded on 25.03.2026 under Section 70 of the CGST Act, 2017 (RUD-10), wherein he, inter alia, admitted and stated that:

- the ITC-01 was prepared by his accountant from the purchase register for all purchases of the last two years, and no physical stock-taking was done on 13.08.2025 or on any other date before the filing;
- a part of the goods of invoice EP/0391 had been sold from time to time before 13.08.2025, and the goods of invoice MP/2311 dated 11.08.2025 were delivered to him only on 21.08.2025;
- invoice COS/77 related to display racks and a computer; and
- he did not know that credit cannot be taken on invoices older than one year and on capital goods, and that he is ready to pay if the credit is held to be inadmissible;

5. AND WHEREAS the invoices on which credit was claimed, their dates, and the findings of the reconstruction of stock as on 13.08.2025 are as detailed in Annexure-A to this notice. It is seen therefrom that: (a) invoices B1 to B3 (taxable value Rs.4,70,000/-, credit Rs.84,600/-) are dated 14.03.2024, 27.07.2024 and 05.08.2024, and more than one year had expired from the date of the invoices before 13.08.2025; (b) invoices C1 and C2 (taxable value Rs.3,95,000/-, credit Rs.71,100/-) and

a part of invoice D1 (taxable value Rs.2,10,000/-, credit Rs.37,800/-) relate to goods which were not in stock on 13.08.2025, the goods having been sold on the Noticee's own bills dated 20.05.2025 to 28.07.2025 (RUD-6) or received on 21.08.2025 (RUD-7); and (c) invoice E1 (taxable value Rs.2,00,000/-, credit Rs.36,000/-) is for capital goods;

6. AND WHEREAS it appears that the credit of Rs.2,29,500/- (central tax Rs.1,14,750/- and Odisha State tax Rs.1,14,750/-) so taken was not admissible under Section 18(1)(a) and Section 18(2) of the CGST Act, 2017/OGST Act, 2017, as credit under Section 18(1)(a) is allowed only on inputs held in stock on the day immediately preceding the date from which the person becomes liable to pay tax and not on capital goods, and is not allowed in respect of a supply after the expiry of one year from the date of issue of the tax invoice; and that the ITC-01 was filed on 06.01.2026, 76 days after the expiry of thirty days from the grant of registration, contrary to Rule 40(1)(b), no extension of time having been identified;

7. AND WHEREAS of the credit of Rs.2,29,500/-, the ledger shows that Rs.81,400/- was utilised on 20.02.2026 and Rs.90,000/- on 20.03.2026 (the ledger balance falling below the wrongly availed credit on those dates), attracting interest at 24% per annum under Section 50(3) read with Rule 88B, and Rs.58,100/- remains unutilised in the ledger;

8. AND WHEREAS the Noticee furnished all the registers and records voluntarily, the facts on which the credit is found inadmissible appear from his own books, and no evidence has been found to show that the credit was taken by reason of fraud, wilful misstatement or suppression of facts to evade tax. The case therefore appears to be one other than fraud, wilful misstatement or suppression of facts, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017/OGST Act, 2017;

9. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the OGST Act, 2017 and the Rules):

- Section 18(2) - credit taken after the expiry of one year from the date of issue of the tax invoice;
- Section 18(1)(a) - credit taken on goods not held in stock on the day immediately preceding the date of liability to pay tax, and on capital goods;
- Rule 40(1)(b) - FORM GST ITC-01 filed beyond thirty days;

10. AND WHEREAS the aforesaid acts of the Noticee render him liable to:

(a) demand and recovery of the ITC wrongly availed under Section 74A of the CGST Act, 2017/OGST Act, 2017;

(b) interest under Section 50(3) of the CGST Act, 2017/OGST Act, 2017 read with Rule 88B; and

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/OGST Act, 2017;

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Cuttack, Odisha, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Bhubaneswar CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the input tax credit of Rs.2,29,500/- (Central tax Rs.1,14,750/- and Odisha State tax Rs.1,14,750/-) taken by them through FORM GST ITC-01 filed on 06.01.2026 on invoices B1 to B3 (older than one year), C1, C2 and part of D1 (goods not held in stock on 13.08.2025) and E1 (capital goods), as detailed in Annexure-A, should not be held to be inadmissible under Section 18(1)(a) and Section 18(2) of the CGST Act, 2017/OGST Act, 2017 read with Rule 40, and should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the OGST Act, 2017;

(ii) the amount of Rs.58,100/- lying unutilised in their electronic credit ledger should not be disallowed and recovered by debit of the ledger, as part of the amount at (i) above;

(iii) interest at 24% per annum under Section 50(3) of the CGST Act, 2017/OGST Act, 2017 read with Rule 88B should not be charged and recovered on the wrongly availed credit utilised, being

Rs.81,400/- from 20.02.2026 and Rs.90,000/- from 20.03.2026, till the date of payment;

(iv) a penalty of Rs.11,475/- (Central tax) and Rs.11,475/- (Odisha State tax), total Rs.22,950/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/OGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

11. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017/OGST Act, 2017, whereby, if the tax at (i) above and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded;
- the credit of Rs.2,28,600/- on invoices A1 to A4 and the part of invoice D1 is not disputed in this notice; and
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/OGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Registration certificate (effective 14.08.2025), application dated 09.09.2025 and sales register entries showing the crossing of the threshold on 14.08.2025;

RUD-2: FORM GST ITC-01 dated 06.01.2026 with the CA certificate;

RUD-3: Electronic credit ledger and FORM GSTR-3B for December 2025 to February 2026;

RUD-4: Summons dated 02.03.2026 under Section 70, with proof of service;

RUD-5: Purchase register and the eleven purchase invoices;

RUD-6: Sales register and cash memo books from 01.04.2025 to 13.08.2025 and the stock register;

RUD-7: Lorry receipts of the suppliers, including the lorry receipt of invoice MP/2311 dated 21.08.2025;

RUD-8: Records produced on 12.03.2026 (panchnama of the document submission);

RUD-9: Inspection report dated 18.03.2026 under Section 71 and stock reconstruction sheet as on 13.08.2025;

RUD-10: Statement of Mr. Z recorded on 25.03.2026 under Section 70;

Annexure-A: Invoice-wise statement of ITC claimed, admissible and demanded, and the statement of utilisation and interest [as per the tables in Part B and the Situation].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Bhubaneswar CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The Commissionerate named is illustrative.*

- ***Teaching point - stock on the day, one-year invoice rule, capital goods.*** *Section 18(1)(a) is a one-time facility: it covers inputs (including goods in semi-finished and finished form) held in stock on the day immediately preceding the date of liability, only on invoices not older than one year (Section 18(2)), and never capital goods. The burden of showing stock on a past date lies on the claimant: a month-end stock register, a purchase register and a CA certificate are not proof. The officer should reconstruct the stock from sales, receipts and the physical stock found later, as in this exercise. Compare Exercise-12 (Section 16(4), time-limit for ordinary ITC, with no stock condition) and Exercises 45/71 (reversal of credit on closure/exit, where the question is the amount to be paid, not eligibility on entry).*
- ***One year - from which date?*** *Section 18(2) bars the credit 'after the expiry of one year from the date of issue of tax invoice', without saying up to which date the year is counted (date of liability, date of grant of registration or date of taking credit). The Master Chart and the usual exercise on this point speak of the date of grant. The exercise therefore uses only invoices that are time-barred on every reading (B1 to B3) and invoices that are within the year on every reading (A1 to A4); a borderline invoice would have to be treated in the notice in the alternative. Similarly, Rule 40(1)(b) speaks of 'the date of becoming eligible' and the exercise assumes grant of registration (the later date) for the timeline; the late filing is stated as a contravention but the admissible credit is not denied on that ground (see B-6), because it is open to argument that the time-limit in the Rule is procedural.*
- ***Fraud or non-fraud?*** *All the facts are in the Noticee's own records and there is no false invoice or supplier, so Section 74A(5)(i) is proposed with the concession of Section 74A(8). If the ITC-01 had been supported by a stock sheet prepared after the event or by sales bills deliberately kept out of the register, the allegation of wilful misstatement or suppression (Section 74A(5)(ii), concession under Section 74A(9)) would have to be considered and the evidence discussed in the notice. Compare Exercises 03-05 and 49 (fake ITC).*
- ***The credit on invoice C2.*** *The goods of invoice MP/2311 were received on 21.08.2025, after the registration took effect. They could be claimed as ordinary credit in FORM GSTR-3B subject to Section 16 (including the time-limit of Section 16(4)); they cannot be brought in through ITC-01. The Noticee should be told that this credit, if separately taken within time, is not disturbed by the demand.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). Here the central tax demand is Rs.1,14,750/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 75

Refund of IGST on export of services claimed after two years from the relevant date and sanctioned in error - Section 54(1), Explanation (relevant date) and Section 74A

Exercise 75: Refund of IGST on export of services claimed after two years from the relevant date and sanctioned in error - Section 54(1), Explanation (relevant date) and Section 74A

Situation in Brief:

1. M/s XXX, a proprietary concern of Mr. Z (GSTIN of West Bengal), YYYY, Kolkata, West Bengal, develops software for overseas clients. During April to July 2024 it exported software development services to M/s AAA Inc., USA, under four invoices totalling Rs.3,90,00,000/-. Mr. Z did not furnish a Letter of Undertaking; on the advice of his consultant the services were treated as zero-rated supplies on payment of integrated tax (IGST) at 18%, and the IGST of Rs.70,20,000/- was paid in cash through FORM GSTR-3B for the respective months and reported in FORM GSTR-1 (Table 6A). The consideration was received in convertible foreign exchange through the authorised dealer bank, the supply of services having been completed before the receipt of payment.

2. On 28.07.2026 M/s XXX filed an application for refund of IGST paid on export of services in FORM GST RFD-01 (ARN generated on 28.07.2026) for the four invoices, with Statement 3, the invoices, the foreign inward remittance certificates (FIRCs) of the bank and the GSTR-3B challans. The acknowledgement in FORM GST RFD-02 was issued on 03.08.2026; no deficiency memo in FORM GST RFD-03 was issued. The Superintendent, CGST Range-[•], sanctioned the whole refund of Rs.70,20,000/- by order in FORM GST RFD-06 dated 24.09.2026 under Section 54(5) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Rule 92, and the amount was credited to the bank account of M/s XXX on 28.09.2026 (payment order in FORM GST RFD-05). The refund order carries the remark 'claim found in order and within time'; the file does not show any computation of the relevant date.

3. The refund was reviewed by the Refund Monitoring Cell of the Commissionerate on 12.10.2026 as part of the scrutiny of sanctioned orders of high value. The cell noticed that the FIRCs show the dates of receipt of foreign exchange as set out below, and that for three of the four invoices the application was filed after two years from the relevant date. A summons dated 14.10.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared on 22.10.2026 with the FIRCs and the bank statements. The invoices, the FIRC dates, the relevant dates and the position on 28.07.2026 are as follows:

Ref	Invoice no. and date	Value (Rs.)	IGST paid (Rs.)	FE received (relevant date)	Last day for claim	Position on 28.07.2026
I-1	SW/24-25/021 dt. 14.04.2024	1,20,00,000	21,60,000	30.04.2024	30.04.2026	Barred - 89 days late
I-2	SW/24-25/034 dt. 14.05.2024	1,00,00,000	18,00,000	28.05.2024	28.05.2026	Barred - 61 days late
I-3	SW/24-25/047 dt. 03.06.2024	90,00,000	16,20,000	10.06.2024	10.06.2026	Barred - 48 days late
I-4	SW/24-25/062 dt. 22.07.2024	80,00,000	14,40,000	05.08.2024	05.08.2026	In time (8 days to spare)
TOTAL		**3,90,00,000**	**70,20,000**			

4. The statement of Mr. Z was recorded on 22.10.2026 under Section 70, wherein he stated that he had been told by his consultant that the claim could be filed 'within two years of the end of the financial year', which he took to be 31.03.2027 for the supplies of FY 2024-25; that the FIRCs had been in his hands since the date of each receipt and were annexed to the application; that the delay was because the consultant was waiting to collect the four invoices into a single claim; that the Superintendent never raised the point of time or asked for any explanation; that he did not conceal any date or document; that the refund has been used in the business as working capital; and that he is prepared to refund the amount for the three time-barred invoices if so held, but that interest and penalty should not be charged because the refund was granted by the department after full scrutiny.

5. The refund pertaining to invoice I-4 (relevant date 05.08.2024; the claim was made 8 days before the last day) is not in dispute. The amount refunded for the three other invoices is Rs.55,80,000/-. The Noticee has not taken, and nothing in the file shows, any extension of time or any condonation. The claim was filed after 28.02.2022, so the exclusion of the period from 15.03.2020 to 28.02.2022 for limitation made by the Supreme Court in its order dated 10.01.2022 (In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No.3 of 2020) has no bearing; all the relevant dates are in 2024.

6. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

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SUGGESTED SOLUTION

(Scrutiny of Sanctioned Refund, Recovery of Erroneous Refund under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Kolkata CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the West Bengal Goods and Services Tax Act, 2017 where relevant, the Integrated Goods and Services Tax Act, 2017 [IGST Act] and the Rules made thereunder):

1. **Section 54(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Rule 89(1) of the CGST Rules, 2017** - the claim for refund of IGST of Rs.55,80,000/- (invoices I-1, I-2 and I-3) was made on 28.07.2026, after the expiry of two years from the relevant date. For services exported where refund of the tax paid is available, the relevant date under **clause (c)(i) of Explanation (2) to Section 54** is the date of receipt of payment in convertible foreign exchange (or in Indian rupees wherever permitted by the Reserve Bank of India), where the supply of services had been completed before the receipt of payment. The relevant dates were 30.04.2024, 28.05.2024 and 10.06.2024, so the claim was in time only up to 30.04.2026, 28.05.2026 and 10.06.2026. The delay was 89, 61 and 48 days.
2. **Section 16(3)(b) of the IGST Act, 2017** - the exporter who pays integrated tax on a zero-rated supply may claim refund of the tax paid, but the refund remains subject to Section 54 of the CGST Act as applied by Section 20 of the IGST Act; the time-limit of Section 54(1) therefore applies to it. The refund of Rs.55,80,000/- was not admissible; having been paid, it is an amount 'erroneously refunded' within Section 74A(1).

Note: *The time-limit is a condition of the claim; the claimant is not charged with any false statement. Every date (invoice, FIRC) was disclosed in the application, and the refund was sanctioned by the department. The error in the order is that of the officer, who passed it under Section 54(5) without examining the relevant date. Section 54(7) required the order within sixty days from the date of receipt of the application complete in all respects (Rule 90 treats the date of filing as the date of the acknowledgement for the counting of that period); the order was passed in 58 days, but the speed in no way cures the bar. Sections 54(5) and 54(7) were not contravened by the Noticee. Invoice I-4 (IGST Rs.14,40,000/-) is a proper refund.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The refund of Rs.55,80,000/- wrongly sanctioned exposes M/s XXX/Mr. Z to the following action under the CGST Act, 2017 read with Section 20 of the IGST Act, 2017:

1. Which demand provision? - **Section 74A(1)** of the CGST Act, 2017 applies where it appears to the proper officer that any tax has been erroneously refunded. Section 74A(12) confines it to the determination of tax 'pertaining to the Financial Year 2024-25 onwards'. Here both the tax period (April to June 2024, FY 2024-25) and the date of the erroneous refund (24.09.2026, FY 2026-27) are within that class, so Sections 73 and 74 are not invoked. (If the refund related to a period up to FY 2023-24, the choice of Sections 73/74 or 74A would have to be reasoned; see Drafting note.)
2. Limitation - for erroneous refund, the notice may be issued within forty-two months from the date of the erroneous refund [Section 74A(2)], i.e. by 06.03.2030 counting from the order of 24.09.2026. The notice is issued in November 2026, within about two months. The order is to be passed within twelve months of the notice [Section 74A(7)], extendable by six months.
3. Why a notice and not review - the Commissioner may, under **Section 107(2)**, examine the record of any proceeding in which an adjudicating authority has passed an order, and direct an officer to apply to the Appellate Authority within six months from the date of communication of the order (here, by 24.03.2027). This route is available but is not adopted: Section 74A(1) specifically provides for a notice to a person to whom a refund has been erroneously made, and the notice gives the Noticee a hearing and fixes the amount, interest and penalty in one adjudication. The two remedies must not be pursued together on the same refund.
4. Demand - IGST of Rs.55,80,000/- (and no central or State tax) erroneously refunded in respect of

invoices I-1, I-2 and I-3, to be recovered under Section 74A(1) read with Section 20 of the IGST Act.

5. Interest - under **Section 50(1)** at 18% per annum on the amount erroneously refunded, as required by Section 74A(1) ('interest under section 50'). Section 50 does not itself fix the date from which interest on an erroneous refund runs; the notice proposes interest from 28.09.2026, the date on which the amount was credited to the Noticee, till payment. Illustratively, up to 30.11.2026 (63 days), interest is Rs.1,73,362/-. The Noticee's objection that interest is not payable because the department granted the refund is a matter for the adjudicating authority; the notice records that the Noticee had the money from 28.09.2026.

6. Penalty - under **Section 74A(5)(i)**, being a case other than fraud, wilful misstatement or suppression of facts: ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.5,58,000/-. A penalty equal to the tax under Section 74A(5)(ii) is not proposed: the Noticee annexed the FIRCs and the invoices, disclosed every date, did not influence the officer, and acted on mistaken advice about the relevant date (see Drafting note). The benefit of **Section 74A(8)** (nil penalty on payment of tax and interest within sixty days of the notice) is available.

7. Specific offence penalties - none. Section 122(1)(viii) (obtaining refund fraudulently) is not attracted, there being no fraud or false claim. No penalty on any other person; the officer's lapse is for departmental action and is not a part of the notice. No penalty under Section 125 is proposed in view of Section 75(13).

8. Recovery - the amount may also be recovered from the Noticee's bank account or the cash/credit ledger on confirmation under Sections 78 and 79. Provisional attachment under Section 83 is not called for.

9. Prosecution - not considered; there is no offence under Section 132.

Illustrative working of the refund erroneously granted:

Ref	IGST refunded (Rs.)	Delay in claim (days)	Erroneous (Rs.)	Proper refund (Rs.)
I-1	21,60,000	89	21,60,000	Nil
I-2	18,00,000	61	18,00,000	Nil
I-3	16,20,000	48	16,20,000	Nil
I-4	14,40,000	0	Nil	14,40,000
TOTAL	**70,20,000**		**55,80,000**	**14,40,000**

Particulars	Amount (Rs.)
IGST erroneously refunded (tax) - Section 74A(1)	55,80,000
Interest @18% from 28.09.2026 to 30.11.2026 (63 days) - Section 50(1)	1,73,362
Penalty - Section 74A(5)(i) (10% of tax)	5,58,000
TOTAL (before concessions under Section 74A(8))	**63,11,362**

Basis: *Interest = 55,80,000 x 18% x 63/365. If tax and interest are paid within sixty days of the notice, no penalty is payable [Section 74A(8)].*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Kolkata, West Bengal, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division-[•], Kolkata [•] CGST Commissionerate, within thirty (30) days of the

receipt of this notice, as to why:

(i) the refund of IGST of Rs.55,80,000/- claimed on 28.07.2026 and sanctioned by order in FORM GST RFD-06 dated 24.09.2026 in respect of invoices I-1, I-2 and I-3, the claim for which was made after the expiry of two years from the relevant dates (30.04.2024, 28.05.2024 and 10.06.2024) in contravention of Section 54(1) read with clause (c)(i) of Explanation (2) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017, should not be held to have been erroneously refunded;

(ii) the said amount of Rs.55,80,000/- should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(iii) interest at 18% per annum under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be charged and recovered on the amount at (i) above from 28.09.2026 till the date of payment;

(iv) a penalty of Rs.5,58,000/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-KOL

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy Commissioner, CGST Division-[●], Kolkata [●] CGST Commissionerate, West Bengal

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN: [●]),
YYYY, Kolkata, West Bengal.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX, a proprietary concern of Mr. Z, exported software development services to M/s AAA Inc., USA, under four invoices (SW/24-25/021 dated 14.04.2024, /034 dated 14.05.2024, /047 dated 03.06.2024 and /062 dated 22.07.2024) of total value Rs.3,90,00,000/-, on payment of integrated tax of Rs.70,20,000/- in cash through FORM GSTR-3B (RUD-1). The consideration was received in convertible foreign exchange on 30.04.2024, 28.05.2024, 10.06.2024 and 05.08.2024 respectively (FIRCs, RUD-2);

2. AND WHEREAS the Noticee filed an application in FORM GST RFD-01 for refund of the said IGST on 28.07.2026 (ARN generated the same day), acknowledged in FORM GST RFD-02 on 03.08.2026 (RUD-3), and the Superintendent, CGST Range-[●], sanctioned the whole refund of Rs.70,20,000/- by order in FORM GST RFD-06 dated 24.09.2026, the amount being credited to the Noticee's bank account on 28.09.2026 (RUD-4). The relevant date was not examined at the time of sanction (RUD-5);

3. AND WHEREAS under Section 54(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 an application for refund may be made before the expiry of two years from the relevant date, which, under clause (c)(i) of Explanation (2) to Section 54 for services exported where refund of tax paid is available, is the date of receipt of payment in convertible foreign exchange where the supply was completed before the receipt of payment. Counted accordingly, the last day for the claim was 30.04.2026 for invoice SW/24-25/021, 28.05.2026 for SW/24-25/034 and 10.06.2026 for SW/24-25/047, whereas the claim was made on 28.07.2026, i.e. 89, 61 and 48 days late; the claim for invoice SW/24-25/062 (relevant date 05.08.2024) was in time;

4. AND WHEREAS the statement of Mr. Z was recorded on 22.10.2026 under Section 70 of the CGST Act, 2017 (RUD-6), wherein he, inter alia, stated that he had been told by his consultant that the claim could be filed within two years of the end of the financial year; that the FIRCs were with him from the dates of receipt and were annexed to the claim; that the delay was due to the consultant collecting the four invoices into one claim; and that he did not conceal any date or document;

5. AND WHEREAS the period of two years mentioned in the said Section is computed from the relevant date defined for the particular class of refund. The class of refund here is refund of integrated tax paid on export of services; the reference to the end of the financial year in clause (e) of the Explanation concerns refund of unutilised input tax credit and has no application to the refund of tax paid. The claim in respect of the three invoices was therefore barred by limitation, no power to condone delay is provided in Section 54, and the amount of Rs.55,80,000/- refunded in respect of them appears to have been erroneously refunded;

6. AND WHEREAS the mistake in the sanction of the refund is that of the proper officer and the Noticee disclosed every date and document in the application; no evidence has been found to show that the refund was obtained by fraud, wilful misstatement or suppression of facts. The case therefore appears

to be one other than fraud, wilful misstatement or suppression of facts, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017;

7. AND WHEREAS the tax pertains to FY 2024-25 and the refund was made in FY 2026-27, both within Section 74A(12), and the notice is issued within forty-two months from the date of erroneous refund [Section 74A(2)];

8. AND WHEREAS it thus appears that the Noticee has contravened Section 54(1) read with clause (c)(i) of Explanation (2) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017 and Rule 89(1) of the CGST Rules, 2017, and has become liable to:

(a) recovery of the amount erroneously refunded under Section 74A of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017; and

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017;

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Kolkata, West Bengal, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division-[•], Kolkata [•] CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of IGST of Rs.55,80,000/- claimed on 28.07.2026 and sanctioned by order in FORM GST RFD-06 dated 24.09.2026 in respect of invoices I-1, I-2 and I-3, the claim for which was made after the expiry of two years from the relevant dates (30.04.2024, 28.05.2024 and 10.06.2024) in contravention of Section 54(1) read with clause (c)(i) of Explanation (2) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017, should not be held to have been erroneously refunded;

(ii) the said amount of Rs.55,80,000/- should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(iii) interest at 18% per annum under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be charged and recovered on the amount at (i) above from 28.09.2026 till the date of payment;

(iv) a penalty of Rs.5,58,000/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 (without prejudice to the benefit available under Section 74A(8)).

9. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017, whereby, if the tax at (ii) above and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded;
- the refund of Rs.14,40,000/- in respect of invoice SW/24-25/062 is not disputed in this notice; and
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017, the IGST Act, 2017 or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: The four export invoices, FORM GSTR-1 (Table 6A) and FORM GSTR-3B with the cash ledger entries for April to July 2024;

RUD-2: Foreign inward remittance certificates (FIRCs) of the bank for the four invoices;

RUD-3: Refund application in FORM GST RFD-01 (ARN dated 28.07.2026), Statement 3 and acknowledgement in FORM GST RFD-02 dated 03.08.2026;

RUD-4: Order in FORM GST RFD-06 dated 24.09.2026 and payment order in FORM GST RFD-05, with the bank credit of 28.09.2026;

RUD-5: Refund file noting and the scrutiny report of the Refund Monitoring Cell dated 12.10.2026;

RUD-6: Statement of Mr. Z recorded on 22.10.2026 under Section 70, with the summons dated 14.10.2026;

Annexure-A: Statement of the relevant dates, last days for the claim and the amount erroneously refunded, with the calculation of interest and penalty [as per the tables in the Situation and Part B].

(_____)
Deputy Commissioner, CGST
Division-[•], Kolkata [•] CGST Commissionerate

Copy to: The Principal Commissioner/Commissioner, CGST, Kolkata [•], for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The Commissionerate named is illustrative.*
- ***Teaching point - the officer's lapse does not validate a barred claim.*** *The notice is not for a false claim but for an erroneous refund: Section 74A(1) allows the department to recover from the person to whom the refund was made any amount refunded in error, whoever made the error, within forty-two months of the refund. The exercise is built on the computation of the relevant date for the particular class of refund (Explanation (2) to Section 54): for goods exported, the date on which the ship or aircraft leaves India, the frontier is crossed or the post despatches them [clause (a)]; for services exported, the date of receipt of payment in convertible foreign exchange (or in Indian rupees where RBI permits) where the services were completed earlier, or the date of the invoice where the payment was received in advance [clause (c)]; for refund of unutilised input tax credit, clause (e) is relevant and must be read in the text in force on the date of the claim (the text of clause (e) has been the subject of amendment and it has not been verified for this exercise, which therefore deals with a refund of tax paid). Compare Exercises 34-37, in which the refund was bad on the merits (fake exports, FEMA realisation, inverted duty, intermediary); here the refund was good on the merits and bad only on limitation.*
- ***Why FY 2026-27?*** *The Master Chart speaks of a refund claim made 'after two years from the relevant date'. To keep the exercise within Section 74A(12) without any argument as to whether the 'pertaining to' test of Section 74A looks at the period of the supply or at the date of the refund, both the period (FY 2024-25) and the refund (24.09.2026) have been placed on or after 01.04.2024. For a refund of a period up to FY 2023-24 sanctioned in FY 2025-26 the question would have to be addressed expressly in the notice; no authority has been verified for the answer. The COVID-19 exclusion by the Supreme Court (order dated 10.01.2022 in Suo Motu Writ Petition (C) No.3 of 2020: period from 15.03.2020 to 28.02.2022 excluded, and a minimum of ninety days from 01.03.2022 where limitation would have expired in that period) matters only for relevant dates before 01.03.2022; it is recorded in the Situation to show that it has been considered. Circular No.157/13/2021-GST has not been verified and is not cited.*
- ***Refund wrongly obtained is not fraud.*** *Section 74A(5)(ii) (penalty equal to the tax) needs fraud, wilful misstatement or suppression. Here the claimant put the FIRCs and invoices with the application, the date was visible on the face of the record, and the officer did not examine it; a mistaken belief in a wrong limitation date (the end of the financial year) is an error of law and not suppression. If the claimant had altered the FIRC dates or filed the claim in two parts to hide the delay, the position would differ (Exercise-34 for the evidence needed). The officer's lapse should be examined separately in the department.*

- ***Interest on an erroneous refund.*** *Section 74A(1) requires interest 'under section 50'. Section 50(1) is framed for tax which was due and unpaid, and it does not say from when interest runs on an amount refunded in error; the notice proposes interest at 18% from the date the money reached the claimant, and the claimant may contest this. The 24% rate under Section 50(3) is for excess ITC and is not applicable.*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). The IGST at stake is Rs.55,80,000/-, so the Deputy/Assistant Commissioner issues the notice; it is not issued by the Superintendent who sanctioned the refund.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 76

Refund of unutilised ITC on export of goods where refund of IGST paid on the same supplies is also claimed - third proviso to Section 54(3), Rule 89(4) and Section 74A

Exercise 76: Refund of unutilised ITC on export of goods where refund of IGST paid on the same supplies is also claimed - third proviso to Section 54(3), Rule 89(4) and Section 74A

Situation in Brief:

1. M/s XXX, a proprietary concern of Mr. Z, YYYY, Tiruppur, Tamil Nadu, manufactures and exports knitted garments from its unit at Tiruppur. It is registered under the CGST Act, 2017 and the TNGST Act, 2017, files a Letter of Undertaking (LUT) every year for exports without payment of integrated tax, and for some consignments, at the choice of the buyer's freight terms, exports on payment of IGST. In the quarter October to December 2025 it exported goods by sea under eight shipping bills of total FOB value Rs.58,05,00,000/-, and made domestic supplies of Rs.16,95,00,000/-. All the shipping bills show export duty as nil.

2. On 18.02.2026 M/s XXX filed an application in FORM GST RFD-01 (ARN generated 18.02.2026) for refund of unutilised input tax credit on zero-rated supply of goods made under LUT for the quarter October to December 2025, under Section 54(3) of the CGST Act, 2017 read with Rule 89(4), claiming Rs.4,64,40,000/-. Statement 3A of the application lists all the eight shipping bills as exports without payment of tax; the 'Net ITC' of the quarter was Rs.6,00,00,000/- (IGST Rs.2,40,00,000/-, central tax Rs.1,80,00,000/-, State tax Rs.1,80,00,000/-) and the adjusted total turnover Rs.75,00,00,000/-, and the claim was worked out as (total FOB value of the eight shipping bills x Net ITC) / adjusted total turnover. Acknowledgement in FORM GST RFD-02 was issued on 24.02.2026. The Assistant Commissioner (Refunds), Division-[•], sanctioned the refund in full by order in FORM GST RFD-06 dated 20.03.2026 (IGST Rs.1,85,76,000/-, central tax Rs.1,39,32,000/-, Tamil Nadu State tax Rs.1,39,32,000/-), credited on 24.03.2026 (FORM GST RFD-05).

3. In August 2026 the data of the shipping bills received from Customs (ICEGATE) was matched with the refund data of the Commissionerate by the Directorate of Systems. The match showed that four of the eight shipping bills carry the status 'IGST paid' and that the IGST on those shipping bills had already been refunded by the Customs system to the bank account of M/s XXX (scroll data of the Customs Houses, Chennai and Tuticorin, RUD-4); and that in FORM GSTR-1 for the three months, M/s XXX itself had reported those four shipping bills in Table 6A as exports with payment of tax, and the other four as exports without payment of tax. All the eight shipping bills also carry drawback (on the customs component only, at the All Industry Rate for the item); the drawback was credited by Customs.

4. A summons dated 02.09.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who produced the shipping bills, the GSTR-1 and GSTR-3B returns, the books and the RFD-01 file. The statement of Mr. Z was recorded on 15.09.2026, and the statement of Mr. P, Finance Manager of M/s XXX, on 16.09.2026, both under Section 70. Mr. P stated that he prepared Statement 3A of the RFD-01 and that the e-mail dated 02.02.2026 sent by him to Mr. Z (retrieved from the Noticee's system under the summons) was his; the e-mail reads: 'Sir, for the RFD-01 I am showing all the eight shipping bills as exports under LUT, so that the turnover of the quarter is not reduced; four of them were IGST-paid ones, but the refund formula will then give us about Rs.1.8 crore more. IGST refund of those four has come from Customs and the GST office will not know it as the two departments do not compare. Please approve.' Mr. Z replied the same day: 'Approved, file it.' Mr. Z stated on 15.09.2026 that he knew that the IGST on the four shipping bills had been received from Customs, that he did not read the RFD-01 in detail, that he signed the application after the approval and that the amount refunded has been used in the business; he said that drawback was only on the customs duty element.

5. The shipping bills of the quarter are as follows (FOB value, mode of export, IGST refunded by Customs, drawback on the customs component and treatment in the RFD-01; the FOB value is also the invoice value):

Shipping bill no. and date	FOB value (Rs.)	Mode	IGST refunded by Customs (Rs.)	Drawback - customs only (Rs.)	In RFD-01 3A
7234561 dt. 08.10.2025	9,36,00,000	LUT	Nil	14,04,000	Yes
7261190 dt. 21.10.2025	7,29,00,000	LUT	Nil	10,93,500	Yes
7342218 dt. 12.11.2025	10,65,00,000	LUT	Nil	15,97,500	Yes

Shipping bill no. and date	FOB value (Rs.)	Mode	IGST refunded by Customs (Rs.)	Drawback - customs only (Rs.)	In RFD-01 3A
7398842 dt. 02.12.2025	8,25,00,000	LUT	Nil	12,37,500	Yes
7270316 dt. 15.10.2025	6,00,00,000	IGST paid	30,00,000	9,00,000	Yes
7339475 dt. 29.11.2025	5,40,00,000	IGST paid	27,00,000	8,10,000	Yes
7384129 dt. 10.12.2025	6,60,00,000	IGST paid	33,00,000	9,90,000	Yes
7415067 dt. 22.12.2025	4,50,00,000	IGST paid	22,50,000	6,75,000	Yes
TOTAL	**58,05,00,000**		**1,12,50,000**	**87,07,500**	

6. Subtotals: FOB value of the four shipping bills under LUT Rs.35,55,00,000/-; FOB value of the four shipping bills with payment of IGST Rs.22,50,00,000/-; total Rs.58,05,00,000/-. The adjusted total turnover of the quarter is Rs.75,00,00,000/- (LUT exports Rs.35,55,00,000/- + IGST-paid exports Rs.22,50,00,000/- + domestic supplies Rs.16,95,00,000/-). The Net ITC of Rs.6,00,00,000/- is not in dispute. The 1.5 times limit in Rule 89(4) on the value of zero-rated supply of goods is not in question in this case, the FOB and invoice values being equal for every shipping bill.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Matching of Shipping Bill Data, Recovery of Erroneous Refund under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Coimbatore CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Tamil Nadu Goods and Services Tax Act, 2017 [TNGST Act], the Integrated Goods and Services Tax Act, 2017 [IGST Act] and the Rules made thereunder):

1. **Third proviso to Section 54(3) of the CGST Act, 2017** - 'no refund of input tax credit shall be allowed, if the supplier of goods or services or both ... claims refund of the integrated tax paid on such supplies'. The Noticee, having exported goods under shipping bills nos. 7270316, 7339475, 7384129 and 7415067 on payment of IGST and received the refund of the IGST (Rs.1,12,50,000/-) from Customs, also claimed refund of ITC on the same supplies in the RFD-01.
2. **Section 16(3) of the IGST Act, 2017** - a registered person making a zero-rated supply may claim either (a) refund of unutilised ITC, on supply under bond or LUT without payment of integrated tax, or (b) refund of the integrated tax paid, on supply on payment of integrated tax. The two options are alternatives for the same supply; the Noticee took both on four shipping bills.
3. **Section 54(3) read with Rule 89(4) of the CGST Rules, 2017** - the formula of Rule 89(4) takes into the numerator only the 'turnover of zero-rated supply of goods', i.e. the value of goods exported without payment of tax under bond or LUT (the lower of the FOB value in the shipping bill and the invoice value, subject to the limit of 1.5 times the value of like goods domestically supplied). The value of the four IGST-paid shipping bills (Rs.22,50,00,000/-) was wrongly included in the numerator, while it rightly remains in the adjusted total turnover in the denominator. The correct refund is Rs.2,84,40,000/- and the refund sanctioned was in excess by Rs.1,80,00,000/-.
4. **Statement 3A of the RFD-01 and Rule 89(2)** - the application furnished statements and documents which were not in conformity with the shipping bills and the Noticee's own FORM GSTR-1 (Table 6A), and the application was signed by Mr. Z after approval by e-mail of the inclusion of the four IGST-paid shipping bills in the claim.

Note: *The drawback credited on the shipping bills (Rs.87,07,500/-, of which Rs.33,75,000/- on the four IGST-paid bills) is on the customs component only. The third proviso refers to drawback 'in respect of central tax'; no case is made in this notice that the drawback in this case includes any central tax component, and the demand is based only on the claim of refund of IGST paid. The second proviso (export duty) is not attracted, since the shipping bills show nil export duty; this should be re-checked on the shipping bills before issue. No question of realisation of sale proceeds (Rule 96B) arises here (compare Exercise-35).*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The refund of Rs.1,80,00,000/- wrongly sanctioned exposes M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the TNGST Act, 2017 and Section 20 of the IGST Act, 2017):

1. Demand of erroneous refund - under **Section 74A(1) of the CGST Act, 2017** (and the TNGST Act, and the IGST Act through Section 20 of the IGST Act). The tax period (October to December 2025, FY 2025-26) and the refund (20.03.2026) are both within Section 74A(12) ('FY 2024-25 onwards'), so Sections 73 and 74 do not apply. The notice may be issued within forty-two months from the date of the erroneous refund, i.e. by 19.09.2029 counting from 20.03.2026 [Section 74A(2)]; the order is due within twelve months of the notice, extendable by six months [Section 74A(7)]. The amount is Rs.1,80,00,000/-: IGST Rs.72,00,000/-, central tax Rs.54,00,000/- and Tamil Nadu State tax Rs.54,00,000/- (the heads in the proportions in which the refund was sanctioned: 40%, 30% and 30%).
2. Interest - under **Section 50(1)** at 18% per annum, as required by Section 74A(1), from 24.03.2026, the date of credit to the Noticee, till payment (the date from which interest runs on an erroneous refund is not stated in Section 50 and is proposed on the footing of the date of credit; see Exercise-75 Drafting

note). Illustratively up to 30.11.2026 (251 days), interest is Rs.22,28,054/- (IGST Rs.8,91,222/-, central tax Rs.6,68,416/-, State tax Rs.6,68,416/-).

3. Penalty - under **Section 74A(5)(ii)**, a penalty equal to the tax, Rs.1,80,00,000/- (IGST Rs.72,00,000/-, central tax Rs.54,00,000/-, State tax Rs.54,00,000/-), because the excess refund arose from wilful misstatement and suppression of facts: (a) Mr. P's e-mail dated 02.02.2026 records that the four IGST-paid shipping bills were deliberately shown as LUT exports 'so that the refund formula will give about Rs.1.8 crore more'; (b) the e-mail records that the IGST refund of those bills had already come from Customs and that 'the GST office will not know it'; (c) Mr. Z approved it in writing the same day and admitted in his statement that he knew of the IGST refund; (d) the Noticee's own GSTR-1 reported the same four bills as exports with payment of tax, so the false classification was made only in the refund application. Compare Exercise-75, where the claimant disclosed all material and a mistaken legal view was the only fault: Section 74A(5)(i) was proposed there. The concessions of **Section 74A(9)** (15% of tax before notice, 25% within sixty days of the notice, 50% within sixty days of the order, with tax and interest) are available.

4. Specific offence penalties - **Section 122(1)(viii)** (obtaining refund of tax by fraud) is proposed in the alternative and without prejudice, subject to Section 75(13) (no double penalty for the same act). No penalty on Mr. P, an employee who acted on the instructions of Mr. Z, is proposed. The Section 122(1A) penalty is limited to transactions covered by clauses (i), (ii), (vii) and (ix) of Section 122(1) and has no application to a refund.

5. Recovery and safeguards - the amount can be recovered under Sections 78 and 79 (including debit of the electronic credit ledger or cash ledger) on confirmation. Because the amount refunded has been used in the business, provisional attachment under Section 83 may be considered by the Commissioner; none is ordered here. A copy of the notice should go to the Customs Houses concerned, for the recovery, if they so decide, of the IGST on the four shipping bills, and for the cross-check of the drawback; the Customs and GST recoveries are separate, as the GST demand is of the ITC refund wrongly given and not of the IGST which was properly refunded by Customs on the shipping bills.

6. Prosecution - Section 132(1) (fraudulently obtaining a refund) has been considered. The amount involved (Rs.1,80,00,000/-) does not exceed Rs.2 crore, and the Master Chart (Template XI) tiers for this class of offence begin above that amount, so prosecution is not proposed on the present figures. If the evidence of other quarters raises the amount above Rs.2 crore, the view should be reviewed.

7. Authority - the central tax and IGST involved (Rs.1,26,00,000/-) exceed Rs.1 crore, so the notice is issued by the Additional/Joint Commissioner of Central Tax (Circular No. 31/05/2018-GST).

Illustrative working of the refund under Rule 89(4) (Net ITC Rs.6,00,00,000; adjusted total turnover Rs.75,00,00,000; ratio 8%):

Particulars	Numerator - zero-rated goods (Rs.)	Refund (Rs.)
As claimed and sanctioned (all eight shipping bills)	58,05,00,000	4,64,40,000
As admissible (four LUT shipping bills only)	35,55,00,000	2,84,40,000
Excess refund (four IGST-paid shipping bills)	**22,50,00,000**	**1,80,00,000**

Head	Refund sanctioned (Rs.)	Excess (Rs.)	Interest to 30.11.2026 (Rs.)	Penalty 74A(5)(ii) (Rs.)
IGST	1,85,76,000	72,00,000	8,91,222	72,00,000
Central tax	1,39,32,000	54,00,000	6,68,416	54,00,000
Tamil Nadu State tax	1,39,32,000	54,00,000	6,68,416	54,00,000
TOTAL	**4,64,40,000**	**1,80,00,000**	**22,28,054**	**1,80,00,000**

Basis: *Excess refund = Rs.22,50,00,000 x Rs.6,00,00,000 / Rs.75,00,00,000. Interest = tax x 18% x 251/365 for each*

head. The Net ITC and the turnover are taken as given in the RFD-01; on adjudication, the Net ITC and the adjusted total turnover are to be verified from the returns.

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Tiruppur, Tamil Nadu, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Additional/Joint Commissioner, CGST, Coimbatore Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.1,80,00,000/- (IGST Rs.72,00,000/-, central tax Rs.54,00,000/- and Tamil Nadu State tax Rs.54,00,000/-) out of the refund of Rs.4,64,40,000/- sanctioned by order in FORM GST RFD-06 dated 20.03.2026, being the refund of input tax credit attributable to the exports under shipping bills nos. 7270316, 7339475, 7384129 and 7415067 on payment of integrated tax, the refund of which integrated tax had been claimed and received by them, in contravention of the third proviso to Section 54(3) of the CGST Act, 2017/TNGST Act, 2017, Section 16(3) of the IGST Act, 2017 and Rule 89(4) of the CGST Rules, 2017, should not be held to have been erroneously refunded;

(ii) the said amount of Rs.1,80,00,000/- should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017/TNGST Act, 2017, read with Section 20 of the IGST Act, 2017;

(iii) interest at 18% per annum under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 and the IGST Act, 2017 should not be charged and recovered on the amount at (ii) above from 24.03.2026 till the date of payment;

(iv) a penalty of Rs.1,80,00,000/- (IGST Rs.72,00,000/-, central tax Rs.54,00,000/- and State tax Rs.54,00,000/-), being equal to the tax due, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 read with Section 20 of the IGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on them under Section 122(1)(viii) of the CGST Act, 2017/TNGST Act, 2017/IGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-CBE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Additional/Joint Commissioner, CGST, Coimbatore Commissionerate, Tamil Nadu

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017 and Section 74A of the Tamil Nadu Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN: [●]),
YYYY, Tiruppur, Tamil Nadu.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX, a proprietary concern of Mr. Z, manufactures and exports knitted garments from Tiruppur. In the quarter October to December 2025 it exported goods under eight shipping bills of total FOB value Rs.58,05,00,000/-: four shipping bills (nos. 7234561, 7261190, 7342218 and 7398842, FOB value Rs.35,55,00,000/-) under Letter of Undertaking without payment of integrated tax, and four shipping bills (nos. 7270316, 7339475, 7384129 and 7415067, FOB value Rs.22,50,00,000/-) on payment of integrated tax, the IGST of Rs.1,12,50,000/- on which was refunded to it by Customs (RUD-1, RUD-2, RUD-4). The same classification was reported by the Noticee in Table 6A of its FORM GSTR-1 for the three months (RUD-3);

2. AND WHEREAS the Noticee filed FORM GST RFD-01 on 18.02.2026 for refund of unutilised ITC of the quarter on zero-rated supplies without payment of tax (Section 54(3) read with Rule 89(4)), claiming Rs.4,64,40,000/- by taking the FOB value of all the eight shipping bills (Rs.58,05,00,000/-) in the numerator (RUD-5); and the Assistant Commissioner sanctioned the refund in full by order in FORM GST RFD-06 dated 20.03.2026, credited on 24.03.2026 (RUD-6);

3. AND WHEREAS the third proviso to Section 54(3) of the CGST Act, 2017 provides that no refund of input tax credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies; Section 16(3) of the IGST Act, 2017 gives the exporter the option to supply under bond or LUT and claim refund of unutilised ITC, or to supply on payment of integrated tax and claim refund of such tax; and Rule 89(4) takes into the formula the turnover of zero-rated supply of goods, being the value of goods exported without payment of tax under bond or LUT. The value of the four IGST-paid shipping bills should therefore not have been included in the numerator, the correct refund being Rs.2,84,40,000/- ([35,55,00,000 x 6,00,00,000] / 75,00,00,000) and the excess being Rs.1,80,00,000/-;

4. AND WHEREAS the statements of Mr. Z and of Mr. P, Finance Manager, were recorded under Section 70 of the CGST Act, 2017 on 15.09.2026 and 16.09.2026 (RUD-7, RUD-8) and the e-mails of 02.02.2026 between them were retrieved under the summons dated 02.09.2026 (RUD-9). Mr. P's e-mail states that all eight shipping bills were being shown as LUT exports 'so that the turnover of the quarter is not reduced', that four were IGST-paid ones, that the refund formula would give about Rs.1.8 crore more, and that the IGST refund of those four had come from Customs and 'the GST office will not know it'. Mr. Z replied 'Approved, file it' and stated on 15.09.2026 that he knew of the IGST refund received from Customs;

5. AND WHEREAS the drawback credited on the shipping bills is on the customs component only and is not made a ground of this notice;

6. AND WHEREAS from the above it appears that the Noticee included the four IGST-paid shipping bills in

the RFD-01 with knowledge, concealed from the proper officer that the IGST had already been refunded, and reported the same bills differently in the GSTR-1, so that the excess refund of Rs.1,80,00,000/- was obtained by wilful misstatement and suppression of facts with intent to obtain a refund not due, attracting penalty under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 read with Section 20 of the IGST Act, 2017, and Section 122(1)(viii);

7. AND WHEREAS the refund was made on 20.03.2026 and the tax period (October to December 2025) falls in FY 2025-26, both being within Section 74A(12), and the notice is within forty-two months from the date of the erroneous refund [Section 74A(2)];

8. AND WHEREAS the Noticee has thus contravened the third proviso to Section 54(3), Section 16(3) of the IGST Act, 2017 and Rule 89(4) and Rule 89(2) of the CGST Rules, 2017 and has become liable to recovery of the amount erroneously refunded, interest under Section 50(1) and penalty under Section 74A(5)(ii) and Section 122(1)(viii);

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Tiruppur, Tamil Nadu, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Additional/Joint Commissioner, CGST, Coimbatore Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.1,80,00,000/- (IGST Rs.72,00,000/-, central tax Rs.54,00,000/- and Tamil Nadu State tax Rs.54,00,000/-) out of the refund of Rs.4,64,40,000/- sanctioned by order in FORM GST RFD-06 dated 20.03.2026, being the refund of input tax credit attributable to the exports under shipping bills nos. 7270316, 7339475, 7384129 and 7415067 on payment of integrated tax, the refund of which integrated tax had been claimed and received by them, in contravention of the third proviso to Section 54(3) of the CGST Act, 2017/TNGST Act, 2017, Section 16(3) of the IGST Act, 2017 and Rule 89(4) of the CGST Rules, 2017, should not be held to have been erroneously refunded;

(ii) the said amount of Rs.1,80,00,000/- should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017/TNGST Act, 2017, read with Section 20 of the IGST Act, 2017;

(iii) interest at 18% per annum under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 and the IGST Act, 2017 should not be charged and recovered on the amount at (ii) above from 24.03.2026 till the date of payment;

(iv) a penalty of Rs.1,80,00,000/- (IGST Rs.72,00,000/-, central tax Rs.54,00,000/- and State tax Rs.54,00,000/-), being equal to the tax due, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 read with Section 20 of the IGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on them under Section 122(1)(viii) of the CGST Act, 2017/TNGST Act, 2017/IGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13).

9. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/TNGST Act, 2017, whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said notice are deemed to be concluded;
- the refund of Rs.2,84,40,000/- attributable to the four LUT shipping bills is not disputed in this notice;

and

- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017, the TNGST Act, 2017, the IGST Act, 2017, the Customs Act, 1962 or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: The eight shipping bills with export invoices and packing lists;

RUD-2: ICEGATE shipping bill status report showing mode of export and IGST refund scroll for the four IGST-paid shipping bills, with Customs data on drawback;

RUD-3: FORM GSTR-1 (Table 6A) and GSTR-3B for October to December 2025;

RUD-4: Bank statement showing the credit of IGST refund and drawback by Customs;

RUD-5: RFD-01 (ARN dated 18.02.2026) with Statements 3A and the acknowledgement in RFD-02 dated 24.02.2026;

RUD-6: Order in FORM GST RFD-06 dated 20.03.2026 and payment order in FORM GST RFD-05;

RUD-7: Statement of Mr. Z recorded on 15.09.2026 under Section 70, with the summons dated 02.09.2026;

RUD-8: Statement of Mr. P recorded on 16.09.2026 under Section 70;

RUD-9: E-mails dated 02.02.2026 between Mr. P and Mr. Z, with the certificate required for electronic records under the law of evidence [see Drafting note];

Annexure-A: Shipping bill-wise statement of FOB value, mode, IGST refunded, drawback, and calculation of the refund under Rule 89(4), interest and penalty [as per the tables in the Situation and Part B].

(_____)
Additional/Joint Commissioner, CGST
Coimbatore Commissionerate

Copy to: The Principal Commissioner/Commissioner, CGST, Coimbatore; the Customs Houses concerned (for information).

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The Commissionerate named is illustrative.*
- ***Teaching point - spotting the ineligible refund from shipping-bill (ICEGATE) data and the GSTR-1.*** *A single shipping bill is either a 'LUT' export (refund of unutilised ITC under Rule 89(4)) or an 'IGST paid' export (refund of IGST, which Customs pays on the shipping bill itself under Rule 96). The third proviso to Section 54(3) bars the ITC refund on a supply for which IGST refund has been claimed. The officer should match (i) Table 6A of the GSTR-1 (with/without payment), (ii) Statement 3A of the RFD-01 and (iii) the shipping bill status and scroll data of ICEGATE. A mismatch on any bill is the red flag. The numerator in Rule 89(4) is the value of exports without payment of tax; the denominator, the adjusted total turnover, still includes all the exports. The cap is therefore a proportion and the working (8%) shows the excess directly. Compare Exercise-34 (fake exports), 35 (FEMA, Rule 96B: sale proceeds), 36 (inverted duty: Net ITC) and 37 (intermediary: no export): in each of these the ground of refusal differs.*
- ***Drawback is not the ground here.*** *The third proviso mentions drawback 'in respect of central tax'. The exercise deliberately does not allege drawback: the drawback on the shipping bills is on the customs component only, and the proviso is worded around central tax. Before a drawback-based demand is made on any other facts, the officer must establish from the drawback schedule/notification in force on the date of export that the rate includes a central tax component; this has not been verified for any notification in this exercise and no notification number is cited. The second proviso (export duty) is likewise not attracted on these shipping bills (nil export duty); check the shipping bills, and Customs, for the item and the period.*

- ***Fraud or non-fraud?*** *In Exercise-75 the claimant disclosed everything and the officer erred; here the evidence of knowledge (the e-mail of 02.02.2026, the written approval, the admission of knowledge of the IGST refund, the different classification in the GSTR-1) is what supports Section 74A(5)(ii). Without it, only Section 74A(5)(i) could be proposed. Electronic evidence retrieved from a computer or communication device should be supported by the certificate required by the law of evidence (the applicable provision of the Bharatiya Sakshya Adhiniyam, 2023 has not been verified for this exercise and should be checked before issue).*
- ***Coordination with Customs.*** *The IGST was rightly refunded by Customs on the four IGST-paid bills; the GST demand is for the ITC refund wrongly given on the same bills, not for the IGST. The notice is copied to the Customs Houses so that the drawback and the IGST scroll data can be preserved for adjudication.*
- *The draft should be settled by the jurisdictional Commissionerate before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). The combined IGST and central tax demand here is Rs.1,26,00,000/-, so the Additional/Joint Commissioner issues the notice.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 77

Refund claimed where the incidence of tax has been passed on to others (unjust enrichment) - Section 54(8)(e), Section 54(5), Rule 89(2)(l)/(m) and Section 74A

Exercise 77: Refund claimed where the incidence of tax has been passed on to others (unjust enrichment) - Section 54(8)(e), Section 54(5), Rule 89(2)(l)/(m) and Section 74A

Situation in Brief:

1. M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Muzaffarpur, Bihar, is registered under the CGST Act, 2017 and the Bihar GST Act, 2017 and carries on the wholesale trade of fresh vegetables (cauliflower, cabbage, carrot and green peas, HSN 0704/0708/0709/0706, not pre-packed) from the vegetable market at Muzaffarpur. Its fourteen regular customers are registered retail chains, hotels and caterers, to whom it supplies against invoices on credit of seven to fifteen days. The invoicing module of its ERP software was configured by the vendor in 2023 with a default rate of 5% (2.5% central tax + 2.5% State tax) for all items, and the tax invoices issued during April to July 2025 show the central tax and State tax as separate lines. The tax so charged was paid by M/s XXX in cash through FORM GSTR-3B.

2. The month-wise supplies, the tax shown on the invoices and the date of payment of that tax are as follows:

Month	Invoices	Value (Rs.)	Tax charged @5% (Rs.)	Tax paid on
April 2025	188	32,40,000	1,62,000	20.05.2025
May 2025	231	41,20,000	2,06,000	20.06.2025
June 2025	214	38,60,000	1,93,000	20.07.2025
July 2025	209	35,80,000	1,79,000	20.08.2025
TOTAL	**842**	**1,48,00,000**	**7,40,000**	-

3. On 02.09.2025 a new accountant of M/s XXX pointed out that fresh vegetables are exempt from tax under Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 (Chapter 7 - vegetables, fresh or chilled), and that the supplies of April to July 2025 should have been made against bills of supply without tax. From 03.09.2025 M/s XXX issued bills of supply. It did not issue any credit note to its customers for the earlier invoices, did not refund or tell them of the tax collected, and did not inform them of the intended refund claim.

4. On 06.10.2025 Mr. Z signed a 'management representation letter' addressed to Mr. P, Chartered Accountant (M/s PPP & Associates, Muzaffarpur), stating that 'no part of the tax paid on the above supplies has been recovered from or passed on to any customer'. Mr. P gave the certificate in Annexure 2 of FORM GST RFD-01 on 08.10.2025, certifying on the basis of the books of account and records that the incidence of tax of Rs.7,40,000/- had not been passed on to any other person. His fee was Rs.37,000/- (5% of the refund).

5. M/s XXX filed FORM GST RFD-01 on 10.10.2025 (ARN AA100925XXXXXXX) under the category 'excess payment of tax' for Rs.7,40,000/- (Rs.3,70,000/- central tax and Rs.3,70,000/- State tax), within two years of the relevant date, which is the date of payment of tax [Explanation (2)(h) to Section 54]. The certificate of Mr. P was uploaded as the document required by Rule 89(2)(m) because the claim exceeded Rs.2 lakh. No deficiency memo or notice in FORM GST RFD-08 was issued. By an order in FORM GST RFD-06 dated 27.11.2025 the Assistant Commissioner sanctioned the entire amount and Rs.7,40,000/- was credited to the bank account of M/s XXX on 29.11.2025 (FORM GST RFD-05). The order does not refer to the invoices or to the question of unjust enrichment, and the amount was paid to the applicant and not credited to the Consumer Welfare Fund.

6. In the scrutiny of refund orders carried out by the Range in February 2026, the claim was selected because the refund of 'excess payment' was supported only by a CA certificate and the registered person was a regular supplier to registered buyers. The premises were visited on 16.02.2026 and a summons dated 17.02.2026 was issued to Mr. Z under Section 70 of the CGST Act, 2017. On 24.02.2026 he produced (a) the sales register for April to July 2025 with a column 'GST collected', (b) copies of all 842 tax invoices, (c) the ERP price list showing 'rate per kg + GST @5%' for each item, (d) customer-wise ledgers and (e) the bank statement showing receipts from the fourteen customers, and (f) his file of the

refund claim, including the letter dated 06.10.2025 and the certificate dated 08.10.2025.

7. Scrutiny of these documents showed that the receipts from the fourteen customers in the bank statement total Rs.1,55,40,000/- (Rs.1,48,00,000/- value + Rs.7,40,000/- tax), that every one of the 842 invoices shows the tax separately, and that no credit note, refund or adjustment in favour of any customer is found in the ledgers up to 24.02.2026.

8. In his statement recorded on 24.02.2026 under Section 70, Mr. Z accepted that the customers paid the invoice value inclusive of the tax shown on the invoices; that he did not issue credit notes or return the tax to the customers; that he 'thought the refund is for the person who paid the tax to the Government and the certificate is only a formality'; that he signed the letter of 06.10.2025 prepared by Mr. P's office without reading it; and that he did not give the invoices or the ledgers to Mr. P, who asked only for the GSTR-3B returns and the 'net sales ledger'. He stated that the bills of supply from September 2025 were issued 'since the exemption became known'.

9. The statements of the authorised persons of three customers (M/s AAA Fresh Mart on 02.03.2026, M/s BBB Retail on 03.03.2026 and M/s CCC Caterers on 05.03.2026) were recorded under Section 70. Each stated that the tax shown in the invoices was paid along with the price, was booked as part of the cost of purchase and was reflected in its own selling price, that it was not aware that the goods were exempt, that no credit note or refund was received from M/s XXX and that it would not be able to claim anything from the Government.

10. The statement of Mr. P was recorded on 12.03.2026 under Section 70. He stated that he has been in practice since 2009; that he had only the GSTR-3B returns and a ledger of 'net sales' of M/s XXX and the letter of Mr. Z; that he did not ask for the invoices, the price list or the bank statement; that he signed the certificate on 08.10.2025 on the strength of the letter; that he is aware that Annexure 2 requires the certifying accountant to examine the books and records; and that, with hindsight, 'it was an error of judgment'. He did not suggest that Mr. Z had told him that the tax had been charged to the customers, and no communication between them to that effect has been found.

11. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX and any other person (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

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SUGGESTED SOLUTION

(Inquiry on summons, Determination of Erroneous Refund under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Patna CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Bihar Goods and Services Tax Act, 2017 [BGST Act] and the Rules made under the two Acts):

1. **Section 54(8)(e) read with Section 54(5) of the CGST Act, 2017** - the refundable amount is payable to the applicant only if the tax paid is such that he 'had not passed on the incidence of such tax and interest to any other person'; in every other case the amount determined as refundable has to be credited to the Consumer Welfare Fund under Section 57. M/s XXX collected the tax from fourteen customers in 842 tax invoices and received it in full. It claimed and received the refund for itself. The claim was therefore not payable to it.
2. **Rule 89(2)(l) and (m) of the CGST Rules, 2017 with Explanation to Rule 89(2)** - a refund claim in which the incidence of tax is relevant has to be accompanied by a declaration that the incidence has not been passed on (where the claim does not exceed Rs.2 lakh) or by a certificate of a chartered accountant or cost accountant in Annexure 2 of FORM GST RFD-01 (where it exceeds Rs.2 lakh). The Explanation provides that where the tax and interest have been recovered from the recipient, the incidence is deemed to have been passed on to the ultimate consumer. The certificate for Rs.7,40,000/- was false: it was obtained on a letter which Mr. Z signed knowing that the invoices carried the tax and the customers had paid it.
3. **Section 31(3)(c) of the CGST Act, 2017** - a registered person supplying exempted goods is to issue a bill of supply and not a tax invoice. The tax invoices issued for the exempt supplies (and the collection of tax on them) were irregular; this is the root of the problem, but it has no separate tax effect once the tax has been paid to the Government.

Note: *(a) The claim is within time (relevant date - date of payment of tax, 20.05.2025 for the first month, so the period of two years ends on 20.05.2027), so the claim is not hit by the two-year limit under Section 54(1) - contrast Exercise-75 (time-barred refund). (b) The tax was not due at all because the supplies were exempt, so the refund claim was substantively valid in principle; the objection is only that the person who bore the tax is not M/s XXX but the customers. (c) Section 34(2) is not 'contravened', but its proviso illustrates the same rule: no reduction in output tax liability by credit note is permitted if the incidence of tax and interest on the supply has been passed on to another person.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the BGST Act, 2017):

1. Route chosen - the refund was paid under an order in FORM GST RFD-06. Two routes are open to the Department: (a) recovery of the 'erroneously refunded' amount by a notice under Section 74A(1), which expressly covers tax 'erroneously refunded' and requires the notice to be issued to the person to whom the refund was made; and (b) a review of the order by the Commissioner under Section 107(2) or Section 108 (appeal or revision against the refund order). Route (a) is adopted, because it is the route the Act gives for recovery of an amount refunded in excess of entitlement and brings in interest and penalty. The Noticee may contend that the RFD-06 order has attained finality unless reviewed; the position should be checked against the latest decisions of the jurisdictional High Court before issue.
2. Demand - under **Section 74A(1)**, Rs.7,40,000/- (Rs.3,70,000/- each under the CGST Act and the BGST Act), being the amount refunded, which was payable to the applicant only if the incidence had not been passed on [Section 54(8)(e)]. The refund was made on 29.11.2025 and is in FY 2025-26, so Section 74A and not Sections 73/74 applies. For an erroneous refund the notice may be issued within forty-two months from the date of the erroneous refund [Section 74A(2)], i.e. up to 29.05.2029; the order must

be passed within twelve months of the notice, extendable by six months [Section 74A(7)].

3. What happens to the amount recovered - the amount that the Government recovers was tax paid on exempt supplies. Under Section 54(5) the amount found refundable in a case in which the incidence was passed on is credited to the Consumer Welfare Fund [Section 57], and does not stay with the applicant. The notice therefore seeks recovery of the whole amount from the applicant; the crediting of the recovered amount to the Fund is a matter of departmental accounting.

4. Interest - under **Section 50(1)** at 18% per annum, as required by Section 74A(1) which asks for the amount 'along with interest payable thereon under section 50', from the date of the refund (29.11.2025) till payment. Illustratively, up to 30.11.2026 (366 days) interest is Rs.1,33,564/- (Rs.66,782/- each under the CGST and BGST Acts). Section 50(3) (24%) is not applicable, as it concerns input tax credit wrongly availed and utilised.

5. Penalty - under **Section 74A(5)(ii)**, a penalty equal to the tax, i.e. Rs.7,40,000/- (Rs.3,70,000/- each under the two Acts). The refund was obtained by wilful misstatement and suppression of facts: Mr. Z (a) knew that all 842 invoices charged tax and that the customers paid it, (b) nevertheless signed a letter that 'no part of the tax' was recovered from customers, (c) kept the invoices, ledgers and bank statement away from the certifying accountant and gave him only a net sales ledger, (d) did not issue credit notes or return the tax to his customers, and (e) applied for the refund about five weeks after coming to know of the exemption. Explanation 2 to Section 74A ('suppression' includes non-declaration of facts that are to be declared in a document) applies to the RFD-01 declaration. The concessions of **Section 74A(9)** (15% of the tax if paid before the notice, 25% within 60 days of the notice and 50% within 60 days of the order, with the tax and interest) are available.

6. Specific offence penalty - **Section 122(1)(viii)** (fraudulently obtains refund of tax) is proposed in the alternative and without prejudice, subject to Section 75(13) (no double penalty for the same act) and Section 126. The mastermind penalty of **Section 122(1A)** is not available, because it is limited to the transactions in clauses (i), (ii), (vii) and (ix) of Section 122(1), and clause (viii) is not among them.

7. The certifying Chartered Accountant (Mr. P) - stated carefully - Section 122(3)(a) penalises a person who 'aids or abets' any of the offences in clauses (i) to (xxi) of Section 122(1) (penalty up to Rs.25,000/-), and the certificate in Annexure 2 is the document on which the refund was paid. However, (a) abetment needs knowledge or intention to assist the offence, and negligence is not enough; (b) the evidence is that Mr. P signed on the strength of the client's letter without verification, with no proof (no e-mail, no message, no payment other than the 5% fee) that he knew the tax had been charged to the customers; (c) the offence abetted, under Section 122(1)(viii), is a 'fraudulent' obtaining of refund, and the fraud on the record is that of Mr. Z. On the present evidence the case against Mr. P is one of gross negligence, and he is not made a noticee. The following steps are proposed instead: (i) a reference to the Institute of Chartered Accountants of India (Director - Discipline) for action under the Chartered Accountants Act, 1949, as the failure to exercise due diligence is a ground of professional misconduct under Item (7) of Part I of the Second Schedule to that Act; and (ii) retention of the file, so that if a communication, a reciprocal benefit or any other evidence of knowledge is found, a separate notice under Section 122(3)(a) can be issued to Mr. P, along with the further action discussed in Exercise-40 (CA as abettor). Mr. P is not a 'taxable person' within Section 122(1), so only Section 122(3) can apply to him.

8. Alternative route (not adopted) - Section 76 (amount collected as tax but not paid to the Government) is also attracted in principle, because on receiving the refund M/s XXX holds an amount which it had collected from customers as tax. Since the tax was in fact paid to the Government in GSTR-3B and the issue arises out of a refund order, the Section 74A route is the apt one (Section 76 is the subject of Exercise-33).

9. Prosecution - Section 132(1)(e) (fraudulently obtaining refund) has been considered. The amount of Rs.7,40,000/- (including the State tax) is below the monetary limit of Rs.100 lakh in Section 132(1)(iii), so prosecution is not proposed.

10. How the incidence of tax is shown to have been passed on (the teaching point) - the burden of showing that the incidence has not been passed on is on the applicant; the Department can establish the contrary from the following documentary indicators: (a) tax invoices in which the tax is shown as a

separate line; (b) price lists/ERP masters in which the price is built as 'rate + GST'; (c) the 'GST collected' column in the sales register and the customer ledgers; (d) bank receipts that include the tax component; (e) absence of credit notes, refunds or adjustments to the customers; (f) statements of a sample of customers; and (g) the Explanation to Rule 89(2), by which recovery from the recipient is deemed to be a passing on of the incidence. A CA certificate is only an aid; it is not conclusive and does not bind the officer.

11. The stage at which unjust enrichment should have been applied - (a) at the scrutiny of the application, where the officer should have asked for the invoice-wise statement, observing that the supplies were made against tax invoices (a deficiency memo or a notice in FORM GST RFD-08 under Rule 92(3), with a reply in FORM GST RFD-09, would have followed); and (b) at the order stage, where, even if the claim was found to be otherwise admissible, the refundable amount was to be credited to the Fund under Section 54(5), and not paid to the applicant under Section 54(8)(e). The order dated 27.11.2025 did neither.

Illustrative working of the amount proposed to be demanded:

Particulars	Central tax (Rs.)	BGST (Rs.)	Total (Rs.)
Tax refunded on 29.11.2025 (demand under 74A(1))	3,70,000	3,70,000	7,40,000
Interest @18% from 29.11.2025 to 30.11.2026 (366 days)	66,782	66,782	1,33,564
Penalty under 74A(5)(ii)	3,70,000	3,70,000	7,40,000
TOTAL	**8,06,782**	**8,06,782**	**16,13,564**

Basis: *Interest is computed on the actual days from the date of the refund (29.11.2025) to 30.11.2026 on the amount of the refund, at 18% on the actual number of days divided by 365 (simple interest). If the Noticee pays under Section 74A(9), the penalty would be Rs.1,11,000/- (15%) before the notice, Rs.1,85,000/- (25%) within 60 days of the notice, or Rs.3,70,000/- (50%) within 60 days of the order, in each case with the tax and interest.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Muzaffarpur, Bihar, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Patna CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.7,40,000/- (Central tax Rs.3,70,000/- and Bihar State tax Rs.3,70,000/-) sanctioned to them by the order in FORM GST RFD-06 dated 27.11.2025 and paid on 29.11.2025 should not be held to have been erroneously refunded, being tax whose incidence was passed on to their customers and which was therefore not payable to them in terms of Section 54(8)(e) read with Section 54(5) of the CGST Act, 2017/BGST Act, 2017;

(ii) the said amount of Rs.7,40,000/- (Rupees Seven Lakh Forty Thousand only) should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the BGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/BGST Act, 2017, as called for by Section 74A(1), should not be charged and recovered on the amount at (ii) above, from 29.11.2025 till the date of payment;

(iv) a penalty of Rs.3,70,000/- (Central tax) and Rs.3,70,000/- (Bihar State tax), total Rs.7,40,000/-, being equal to the tax due, should not be imposed on them under Section 74A(5)(ii) of the CGST

Act, 2017/BGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on them under Section 122(1)(viii) of the CGST Act, 2017/BGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-PATNA

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Patna CGST Commissionerate, Bihar

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Bihar Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN: [●]),
YYYY, Muzaffarpur, Bihar.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX, a regular registered person, carries on the wholesale trade of fresh vegetables at Muzaffarpur, Bihar, and during April to July 2025 made supplies of such vegetables of the value of Rs.1,48,00,000/- to fourteen registered customers against 842 tax invoices (Annexure-A), in each of which central tax and State tax at 2.5% each were shown as separate lines, aggregating Rs.7,40,000/-, and the tax so charged was received from the customers and paid by the Noticee through FORM GSTR-3B on 20.05.2025, 20.06.2025, 20.07.2025 and 20.08.2025 (RUD-5, RUD-6, RUD-8);

2. AND WHEREAS the supplies being of fresh or chilled vegetables falling in Chapter 7, they were exempt from tax under Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, and the Noticee, on being told so on 02.09.2025, filed an application for refund of the said Rs.7,40,000/- (Rs.3,70,000/- central tax and Rs.3,70,000/- State tax) in FORM GST RFD-01 on 10.10.2025 under the category 'excess payment of tax', with a certificate dated 08.10.2025 in Annexure 2 of FORM GST RFD-01 issued by Mr. P, Chartered Accountant, to the effect that the incidence of the tax had not been passed on to any other person, and a management representation letter dated 06.10.2025 signed by Mr. Z (RUD-1);

3. AND WHEREAS by an order in FORM GST RFD-06 dated 27.11.2025 (RUD-2) the Assistant Commissioner sanctioned the entire amount of Rs.7,40,000/-, which was credited to the bank account of the Noticee on 29.11.2025, without calling for the invoices and without crediting the amount to the Consumer Welfare Fund;

4. AND WHEREAS a summons dated 17.02.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z (RUD-3), in response to which he appeared on 24.02.2026 and produced the sales register with the column 'GST collected', copies of all 842 tax invoices, the ERP price list showing 'rate per kg + GST @5%', customer-wise ledgers, the bank statement and the file of the refund claim (RUD-5 to RUD-7);

5. AND WHEREAS the scrutiny of these documents revealed that (a) every one of the 842 invoices shows central tax and State tax as separate lines; (b) the receipts from the fourteen customers in the bank statement total Rs.1,55,40,000/-, being Rs.1,48,00,000/- value plus Rs.7,40,000/- tax; and (c) no credit note, refund or adjustment in favour of any customer is found in the ledgers up to 24.02.2026 (Annexure-A);

6. AND WHEREAS in his statement recorded on 24.02.2026 under Section 70 (RUD-4) Mr. Z, inter alia, stated that:

- the customers paid the invoice value inclusive of the tax shown on the invoices, and he did not issue credit notes to them or return the tax;
- he thought that 'the refund is for the person who paid the tax to the Government and the certificate is only a formality';

- he signed the letter dated 06.10.2025 stating that no part of the tax had been recovered from or passed on to any customer, without reading it; and
- he did not give the invoices or the ledgers to Mr. P, who asked only for the GSTR-3B returns and the 'net sales ledger';

7. AND WHEREAS the statements of the authorised persons of M/s AAA Fresh Mart (02.03.2026), M/s BBB Retail (03.03.2026) and M/s CCC Caterers (05.03.2026), recorded under Section 70 (RUD-9), confirm that the tax shown in the invoices was paid along with the price, was treated as a part of the cost of purchase and was reflected in their selling prices, that no credit note or refund was received from the Noticee, and that they had no knowledge that the goods were exempt;

8. AND WHEREAS Mr. P, in his statement recorded on 12.03.2026 (RUD-10), stated that he had only the GSTR-3B returns, a ledger of 'net sales' and the letter of Mr. Z, did not ask for the invoices, the price list or the bank statement, and signed the certificate on the strength of the letter;

9. AND WHEREAS in terms of Section 54(8)(e) of the CGST Act, 2017 the refundable amount is payable to the applicant only if he had not passed on the incidence of such tax and interest to any other person; in all other cases, the amount is to be credited to the Consumer Welfare Fund under Section 54(5) read with Section 57. By the Explanation to Rule 89(2) of the CGST Rules, 2017, where the tax has been recovered from the recipient, the incidence is deemed to have been passed on. In the present case, the tax was recovered from the customers in the invoices, and the refund of Rs.7,40,000/- was therefore not payable to the Noticee and has been erroneously refunded to him;

10. AND WHEREAS it appears that the Noticee, with the knowledge that the tax shown in the invoices had been recovered from the customers, signed and furnished a representation that no part of the tax had been passed on, withheld the invoices, ledgers and bank statement from the certifying accountant, and thereby obtained the refund by wilful misstatement and suppression of facts, attracting penalty under Section 74A(5)(ii) of the CGST Act, 2017/BGST Act, 2017;

11. AND WHEREAS it thus appears that the Noticee has contravened the provisions of Section 54(8)(e) read with Section 54(5) of the CGST Act, 2017 and Rule 89(2)(l) and (m) of the CGST Rules, 2017 (and the corresponding provisions of the BGST Act, 2017), and that the aforesaid acts render him liable to:

(a) demand and recovery of the amount erroneously refunded under Section 74A of the CGST Act, 2017/BGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/BGST Act, 2017;

(c) penalty under Section 74A(5)(ii) of the CGST Act, 2017/BGST Act, 2017; and

(d) penalty under Section 122(1)(viii) of the CGST Act, 2017/BGST Act, 2017 (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c) above);

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Muzaffarpur, Bihar, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Patna CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.7,40,000/- (Central tax Rs.3,70,000/- and Bihar State tax Rs.3,70,000/-) sanctioned to them by the order in FORM GST RFD-06 dated 27.11.2025 and paid on 29.11.2025 should not be held to have been erroneously refunded, being tax whose incidence was passed on to their customers and which was therefore not payable to them in terms of Section 54(8)(e) read with Section 54(5) of the CGST Act, 2017/BGST Act, 2017;

(ii) the said amount of Rs.7,40,000/- (Rupees Seven Lakh Forty Thousand only) should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the BGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/BGST Act, 2017, as called for by Section 74A(1), should not be charged and recovered on the amount at (ii) above, from 29.11.2025 till the date of payment;

(iv) a penalty of Rs.3,70,000/- (Central tax) and Rs.3,70,000/- (Bihar State tax), total Rs.7,40,000/-, being equal to the tax due, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/BGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) penalty should not separately be imposed on them under Section 122(1)(viii) of the CGST Act, 2017/BGST Act, 2017, without prejudice to (iv) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

12. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon (including, if the Noticee claims that the incidence of tax was not passed on, the credit notes or refund vouchers issued to the customers and the documentary proof of their payment), must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/BGST Act, 2017, whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said notice are deemed to be concluded;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/BGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GST RFD-01 filed on 10.10.2025 with Annexure 2 certificate dated 08.10.2025 of Mr. P and the management representation letter dated 06.10.2025 of Mr. Z;

RUD-2: Order in FORM GST RFD-06 dated 27.11.2025 and payment advice in FORM GST RFD-05;

RUD-3: Summons dated 17.02.2026 issued under Section 70 of the CGST Act, 2017, with proof of service;

RUD-4: Statement of Mr. Z recorded under Section 70 on 24.02.2026;

RUD-5: Sales register for April to July 2025 and copies of 842 tax invoices produced on 24.02.2026;

RUD-6: ERP price list and customer-wise ledgers of the fourteen customers;

RUD-7: Bank statement of M/s XXX for April 2025 to February 2026;

RUD-8: FORM GSTR-1 and FORM GSTR-3B for April 2025 to July 2025;

RUD-9: Statements of authorised persons of M/s AAA Fresh Mart, M/s BBB Retail and M/s CCC Caterers recorded under Section 70 on 02.03.2026, 03.03.2026 and 05.03.2026;

RUD-10: Statement of Mr. P, Chartered Accountant, recorded under Section 70 on 12.03.2026;

Annexure-A: Month-wise statement of invoices, value, tax charged and receipts, with the calculation of interest and penalty [as per the table in the Situation and the working in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Patna CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN, ARN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The entry number of the exemption for fresh vegetables (Chapter 7) in the Schedule to Notification No. 2/2017-*

CT(Rate) should be added from the consolidated notification before issue; the notice cites the notification and the Chapter only.

- ***Teaching point - unjust enrichment.*** *A refund of tax is not payable to the applicant just because the tax was not due. If the applicant has recovered the tax from his customers, the refundable amount goes to the Consumer Welfare Fund [Section 54(5), (8)(e) and Section 57]. The officer must test this at the sanction stage (what documents show that the tax was or was not passed on?) and, if it was missed, recover under Section 74A. Compare Exercise-75 (refund claimed after two years - a limitation issue, with no question of incidence), Exercises 34-37 (refunds wrongly claimed on other grounds - fake exports, FEMA, inverted duty, intermediary) and Exercise-40 (CA as abettor, where the professional's part in the offence is proved); here the CA's role is deliberately left at negligence, with the abetment route kept open.*
- ***Section 122(3) and the CA - why he is not a noticee.*** *Aiding and abetting needs knowledge of the offence. A certificate given without verification, on the strength of the client's letter, is negligence and makes out professional misconduct (Item (7), Part I, Second Schedule, Chartered Accountants Act, 1949), which only the Institute can punish. If the investigation shows that the CA was told of the tax collection, or that the certificate was a 'standard product' sold against a success fee with the knowledge of the facts, a separate notice under Section 122(3)(a) (maximum Rs.25,000/-), and, in a big case, Section 132(1)(l), should be considered. The same applies to a cost accountant.*
- ***Fraud or non-fraud?*** *A pure error (e.g. a mistake in the CA's reading of the books, with the taxpayer not knowing the facts) would be a case under Section 74A(5)(i). Here the taxpayer himself issued the invoices charging the tax and signed a letter contrary to it, and held back the documents from the certifier; hence Section 74A(5)(ii) is proposed. The charge must always be supported by the evidence discussed in the body of the notice.*
- ***Interest on erroneous refund.*** *Section 74A(1) requires the notice to ask for the amount 'along with interest payable thereon under Section 50'; the computation here is under Section 50(1) at 18% from the date of the refund. The adjudicating authority should keep in view that the language of Section 50 speaks of tax not paid, and that the manner of computing interest for erroneous refunds is not spelt out in the Rules, so the Noticee may challenge the start date or rate.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh). Here the central tax involved is Rs.3,70,000/-, within the Superintendent's limit. The State tax portion is covered by cross-empowerment/the corresponding provisions of the BGST Act, as in the other exercises of the series.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 78

Refund of unutilised ITC claimed for reasons other than zero-rated supplies or inverted duty structure - proviso to Section 54(3), Rule 89(5) and Section 74A

Exercise 78: Refund of unutilised ITC claimed for reasons other than zero-rated supplies or inverted duty structure - proviso to Section 54(3), Rule 89(5) and Section 74A

Situation in Brief:

1. M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Cherlapally Industrial Area, Hyderabad, Telangana, is registered under the CGST Act, 2017 and the Telangana GST Act, 2017. It manufactures injection-moulded plastic containers (HSN 3923) from polypropylene granules (HSN 3902) for sale to FMCG companies. In the period April to August 2025 the containers (outward supplies) were taxable at 18% (9% central tax + 9% State tax) and the granules (the principal input), the input services (tool maintenance, freight and testing charges) and the injection moulding machine (capital goods) purchased by it all bore tax at 18% as shown in the supplier invoices.

2. The month-wise supplies, the output tax paid and the input tax credit (ITC) availed in FORM GSTR-3B (and appearing in FORM GSTR-2B) for April to August 2025 are as follows (the opening balance of the electronic credit ledger on 01.04.2025 was nil):

Month	Outward supplies (Rs.)	Output tax @18% (Rs.)	ITC on inputs (Rs.)	ITC on input services (Rs.)	ITC on capital goods (Rs.)
April 2025	60,00,000	10,80,000	18,00,000	90,000	0
May 2025	52,00,000	9,36,000	16,20,000	81,000	14,40,000
June 2025	45,00,000	8,10,000	10,80,000	72,000	0
July 2025	40,00,000	7,20,000	9,00,000	63,000	0
August 2025	38,00,000	6,84,000	7,20,000	54,000	0
TOTAL	**2,35,00,000**	**42,30,000**	**61,20,000**	**3,60,000**	**14,40,000**

3. The output tax was paid wholly by utilisation of the ITC, so no cash was paid in any month. The roll-forward of the electronic credit ledger is as follows:

Month	Opening balance (Rs.)	ITC availed (Rs.)	Utilised for output tax (Rs.)	Closing balance (Rs.)
April 2025	0	18,90,000	10,80,000	8,10,000
May 2025	8,10,000	31,41,000	9,36,000	30,15,000
June 2025	30,15,000	11,52,000	8,10,000	33,57,000
July 2025	33,57,000	9,63,000	7,20,000	36,00,000
August 2025	36,00,000	7,74,000	6,84,000	36,90,000
TOTAL	**-**	**79,20,000**	**42,30,000**	**36,90,000**

4. The credit balance of Rs.36,90,000/- (Rs.18,45,000/- each under the central tax and State tax heads) at the end of August 2025 arose because (a) the sales of the company fell from Rs.60 lakh in April to Rs.38 lakh in August 2025 after its largest customer deferred orders; (b) it bought the granules in bulk, under a price-lock contract with the supplier, to the extent of Rs.3,40,00,000/- against a consumption of Rs.1,46,00,000/- in the five months (closing stock as per the stock register on 31.08.2025: Rs.1,94,00,000/-, carrying ITC of Rs.34,92,000/-); and (c) the injection moulding machine purchased in May 2025 for Rs.80,00,000/- carried ITC of Rs.14,40,000/-.

5. On 15.10.2025 M/s XXX filed an application in FORM GST RFD-01 for the tax periods April 2025 to August 2025 for refund of Rs.36,90,000/- under the category 'ITC accumulated due to inverted tax structure'. The statement of invoices received and issued (Rule 89(2)(h)) uploaded with it showed the rate of tax on every purchase and sale as 18%. The computation uploaded under Rule 89(5) took the entire outward supplies of Rs.2,35,00,000/- as 'turnover of inverted rated supply' and also as 'adjusted total turnover', Net ITC (ITC on inputs) of Rs.61,20,000/-, tax payable on the said supplies of

Rs.42,30,000/- and ITC on inputs and input services of Rs.64,80,000/-, and arrived at a 'maximum refund amount' of Rs.21,25,000/-.

6. No deficiency memo (FORM GST RFD-03) or notice (FORM GST RFD-08) was issued. By an order in FORM GST RFD-06 dated 08.12.2025 the Assistant Commissioner sanctioned Rs.21,25,000/- (Rs.10,62,500/- central tax and Rs.10,62,500/- State tax) and rejected the balance of Rs.15,65,000/- as being 'beyond the formula under Rule 89(5)'. The amount was credited to the bank account of M/s XXX on 11.12.2025. The order does not examine whether the rate of tax on inputs was higher than the rate on outputs.

7. In the post-sanction scrutiny of inverted-duty refund orders in January 2026 the Division noticed that the rate on inputs and outputs in the statement of invoices was the same. A summons dated 02.02.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared on 10.02.2026 and produced the GSTR-3B returns, the electronic credit ledger, the purchase and sales registers, the stock register and the refund file. The stock register was verified with the books on 18.02.2026.

8. In his statement recorded on 10.02.2026 under Section 70 Mr. Z stated that the granules and the containers are both taxed at 18%; that the credit accumulated 'because we bought a lot of material at a fixed price, sales came down and we also bought the machine'; that his accountant told him that refund of accumulated credit was available under the 'inverted tax structure' option; that he did not know the meaning of the term; and that all details, including the rates, were disclosed in the statement of invoices. The accountant, Mr. P, in his statement on 11.02.2026, said that he had chosen that option 'because it was the only option for refund of ITC on domestic sales in the online form' and had not examined the rates.

9. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

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SUGGESTED SOLUTION

(Inquiry on summons, Determination of Erroneous Refund under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Medchal CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Telangana Goods and Services Tax Act, 2017 [TGST Act] and the Rules made under the two Acts):

1. **Proviso to Section 54(3) of the CGST Act, 2017** - under sub-section (3) a registered person may claim refund of any unutilised ITC at the end of any tax period, but the first proviso says that no refund of unutilised ITC shall be allowed in cases other than (i) zero-rated supplies made without payment of tax, and (ii) cases where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies (other than nil-rated or fully exempt supplies). M/s XXX has no zero-rated supply, and the rate of tax on its inputs (18%) is not higher than the rate on its output (18%). The credit accumulated for reasons (low sales, stock of raw materials and capital goods) which the proviso does not recognise. The claim was outside the proviso.
2. **Rule 89(5) of the CGST Rules, 2017** - the formula for refund on account of inverted duty applies only to the 'turnover of inverted rated supply of goods and services'. As no supply of the Noticee is an inverted rated supply, this turnover is nil, and so is the 'maximum refund amount'. The Noticee showed the entire turnover of Rs.2,35,00,000/- as inverted rated supply, which was a mis-statement.
3. **Section 54(1) read with Rule 89(1) and Rule 89(2)(h)** - the claim was filed under a wrong refund category ('inverted tax structure') on the statement of invoices which itself showed that the rates were the same.

Note: *(a) The ITC itself was validly availed under Section 16 (no contravention of Section 16 is alleged) and is not 'wrongly availed' - it is simply not refundable. Refund of ITC and refund of tax are two different things: Section 54(1) refunds 'tax and interest' that has been paid, while Section 54(3) refunds ITC only in the two cases of the proviso. The refund of ITC is not allowed as a matter of right when it has accumulated, and the balance remains in the electronic credit ledger for use against future output tax. (b) Even in a genuine inverted-duty case, the 'Net ITC' in the formula covers only ITC on inputs (goods) and not that on input services and capital goods; Exercise-36 deals with that mistake, and it is not the issue here.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the TGST Act, 2017):

1. Route chosen - the amount was refunded under an order in FORM GST RFD-06 and is recoverable as 'erroneously refunded' under **Section 74A(1)**, which requires a notice to the person to whom the refund has been made. The alternatives - review of the order by the Commissioner under Section 107(2) or revision under Section 108 - are not adopted. The Noticee may contend that the sanction order can be set aside only in appeal or review; the position should be checked against the latest decisions of the jurisdictional High Court before issue.
2. Demand - Rs.21,25,000/- (Rs.10,62,500/- each under the CGST and TGST Acts). Since the refund was made on 11.12.2025 (FY 2025-26), Section 74A applies [Section 74A(12)]. The notice may be issued within forty-two months from the date of the erroneous refund [Section 74A(2)], i.e. up to 11.06.2029, and the order must be passed within twelve months of the notice, extendable by six months [Section 74A(7)]. The balance of Rs.15,65,000/- was rejected and is not in issue.
3. Interest - under **Section 50(1)** at 18% per annum as called for by Section 74A(1), from the date of the refund, 11.12.2025, till payment. Illustratively, up to 30.11.2026 (354 days), interest is Rs.3,70,972/- (Rs.1,85,486/- each under the CGST and TGST Acts). Section 50(3) (24%) is not applicable, because it applies to ITC wrongly availed and utilised, and no ITC is alleged to have been wrongly availed here.
4. Penalty - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e.

Rs.2,12,500/- (Rs.1,06,250/- each). Why not Section 74A(5)(ii)? Fraud, wilful misstatement or suppression must be shown from evidence. Here the statement of invoices and the Rule 89(5) computation uploaded with the claim disclosed the rates and the figures, the ledgers and stock records were produced on summons, the Noticee had no financial gain beyond the claim, the refund was applied for under a wrong category on the advice of the accountant, and the officer sanctioned it without examining the rates. This is, on the evidence, an error of law and not suppression. The concession under **Section 74A(8)** is available: if the tax and interest are paid before the notice, no notice is to be served; if paid within sixty days of the notice, no penalty is payable and the proceedings are concluded.

5. Specific offence penalties - Section 122(1)(viii) (fraudulently obtains refund) is not attracted, as no fraud is alleged. No separate penalty is proposed under Section 122 or Section 125.

6. Re-credit of the ITC - the ITC was validly availed and the Noticee was never entitled to a refund of it, only to its utilisation. Under Rule 86(4B) of the CGST Rules, 2017 (see Circular No. 174/06/2022-GST dated 06.07.2022), where an erroneously refunded amount is deposited with interest and penalty by FORM GST DRC-03, the corresponding amount is re-credited to the electronic credit ledger. The Noticee should be told in the notice that, after payment, the ITC can be used against future output tax, so that the cost of the error is only interest and any penalty. (The re-credit is subject to the ITC being otherwise available and is to be processed by the proper officer.)

7. Prosecution - not proposed; there is no fraud, and the amount (Rs.21,25,000/- plus State tax) is well below the monetary limit of Section 132(1).

8. Grounds for refund of ITC are exhaustive (the teaching point) - Section 54(3) is a closed list: unutilised ITC is refundable only for (i) zero-rated supplies made without payment of tax (exports or supplies to SEZ under bond/LUT) and (ii) inverted duty. There is no refund of 'accumulated ITC' as such, because of low sales, slow-moving stock, capital expenditure or competitive pricing (Master Chart, Template VI, Sl. No. 5). The claim should be examined on three questions: is there a zero-rated supply?; is the rate of tax on the goods bought higher than the rate on the goods sold?; is it one of the goods/services for which refund has been barred by notification (Notification No. 5/2017-CT(Rate) as amended)?

9. How the officer should have dealt with the claim - on 15.10.2025 the officer had the statement of invoices before him, which showed 18% on both sides. (a) If documents were missing, a deficiency memo in FORM GST RFD-03 within fifteen days of filing [Rule 90(3)]; (b) as the claim was not admissible, a notice in FORM GST RFD-08, giving reasons in writing, with a reply in FORM GST RFD-09 within fifteen days, an opportunity of being heard and an order in FORM GST RFD-06 rejecting the claim [Rule 92(3)]; and (c) the order within sixty days of the receipt of a complete application [Section 54(7)]. The officer instead applied the formula mechanically to the figures submitted and sanctioned the output of the formula without asking whether there was an inversion at all.

Test of 'inversion' for the period April to August 2025:

Supply	HSN	Rate of tax (CGST + TGST)	Role	Rate on input higher than output?
Polypropylene granules (principal input)	3902	18% (9% + 9%)	Input (goods)	No - input 18% = output 18%
Input services (tool maintenance, freight, testing)	Various SAC	18% (9% + 9%)	Input services	Not relevant - not part of Net ITC
Injection moulding machine	8477	18% (9% + 9%)	Capital goods	Not relevant - not part of Net ITC
Plastic containers (output)	3923	18% (9% + 9%)	Output	-

Working of the erroneous refund (Rule 89(5)) and of the amounts proposed to be demanded:

Particulars	Claimant's working (Rs.)	Correct working (Rs.)
Turnover of inverted rated supply	2,35,00,000	Nil

Particulars	Claimant's working (Rs.)	Correct working (Rs.)
Adjusted total turnover	2,35,00,000	2,35,00,000
Net ITC (inputs only)	61,20,000	61,20,000
Term 1 = turnover of inverted rated supply x Net ITC / Adjusted total turnover	61,20,000	Nil
Term 2 = tax payable on inverted rated supply x Net ITC / ITC on inputs and input services (= 42,30,000 x 61,20,000 / 64,80,000)	39,95,000	Nil
Maximum refund amount (Term 1 - Term 2)	21,25,000	Nil
Refund sanctioned on 08.12.2025 / erroneously refunded	**21,25,000**	**21,25,000**

Particulars	Central tax (Rs.)	TGST (Rs.)	Total (Rs.)
Refund erroneously made on 11.12.2025 (74A(1))	10,62,500	10,62,500	21,25,000
Interest @18% from 11.12.2025 to 30.11.2026 (354 days)	1,85,486	1,85,486	3,70,972
Penalty under 74A(5)(i) (10% of tax)	1,06,250	1,06,250	2,12,500
TOTAL	**13,54,236**	**13,54,236**	**27,08,472**

Basis: *The Rule 89(5) formula used is: Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services x Net ITC / Adjusted Total Turnover) - tax payable on such inverted rated supply of goods and services x (Net ITC / ITC availed on inputs and input services)}, as amended with effect from 05.07.2022. Interest is simple interest at 18% on the actual number of days divided by 365 from the date of the refund. The statement in the ledger that the credit is largely locked in stock (Rs.34,92,000/- of ITC on closing stock of granules on 31.08.2025) and capital goods (Rs.14,40,000/-) shows that the accumulation is one of timing, not of rate inversion: the accumulated credit will be used up as the stock is consumed and output tax is paid.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Cherlapally Industrial Area, Hyderabad, Telangana, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Medchal CGST Commissionerate, Hyderabad, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.21,25,000/- (Central tax Rs.10,62,500/- and Telangana State tax Rs.10,62,500/-) of unutilised input tax credit sanctioned to them by the order in FORM GST RFD-06 dated 08.12.2025 and paid on 11.12.2025 should not be held to have been erroneously refunded, as the credit had accumulated for reasons other than those specified in the first proviso to Section 54(3) of the CGST Act, 2017/TGST Act, 2017, the rate of tax on their inputs not being higher than the rate of tax on their output supplies and no zero-rated supply having been made;

(ii) the said amount of Rs.21,25,000/- (Rupees Twenty-One Lakh Twenty-Five Thousand only) should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TGST Act, 2017, as called for by Section 74A(1), should not be charged and recovered on the amount at (ii) above,

from 11.12.2025 till the date of payment;

(iv) a penalty of Rs.1,06,250/- (Central tax) and Rs.1,06,250/- (Telangana State tax), total Rs.2,12,500/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/TGST Act, 2017 (without prejudice to the benefit of nil penalty to which they may become entitled under Section 74A(8) on payment of the tax and interest within the time therein specified).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[•]/2026-MEDCHAL

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy Commissioner, CGST Division - [•], Medchal CGST Commissionerate, Hyderabad, Telangana

Date: [•].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Telangana Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX (GSTIN: [•]),
YYYY, Cherlapally Industrial Area, Hyderabad, Telangana.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX, a regular registered person, manufactures plastic containers (HSN 3923) from polypropylene granules (HSN 3902); during April to August 2025, its outward supplies of Rs.2,35,00,000/- and all its purchases of inputs, input services and capital goods were taxable at 18% (9% central tax + 9% State tax), and it availed ITC of Rs.79,20,000/- (inputs Rs.61,20,000/-, input services Rs.3,60,000/-, capital goods Rs.14,40,000/-), utilised Rs.42,30,000/- of it for payment of output tax and was left with a balance of Rs.36,90,000/- in the electronic credit ledger on 31.08.2025 (Annexure-A; RUD-1, RUD-2);

2. AND WHEREAS the Noticee filed an application in FORM GST RFD-01 on 15.10.2025 for the tax periods April 2025 to August 2025 for refund of Rs.36,90,000/- under the category 'ITC accumulated due to inverted tax structure', with a statement of invoices which showed the rate of tax on all purchases and sales as 18%, and a computation under Rule 89(5) of the CGST Rules, 2017 in which the whole outward supplies of Rs.2,35,00,000/- were taken as 'turnover of inverted rated supply', arriving at a 'maximum refund amount' of Rs.21,25,000/- (RUD-3);

3. AND WHEREAS by an order in FORM GST RFD-06 dated 08.12.2025 (RUD-4) the Assistant Commissioner sanctioned Rs.21,25,000/- (Rs.10,62,500/- central tax and Rs.10,62,500/- State tax), which was credited to the bank account of the Noticee on 11.12.2025, and rejected the balance;

4. AND WHEREAS a summons dated 02.02.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z (RUD-5), in response to which he appeared on 10.02.2026 and produced the GSTR-3B returns, the electronic credit ledger, the purchase and sales registers, the stock register and the refund file (RUD-1, RUD-2, RUD-6, RUD-7);

5. AND WHEREAS in his statement recorded on 10.02.2026 under Section 70 (RUD-8) Mr. Z stated, inter alia, that the granules and the containers are both taxed at 18%; that the credit accumulated because material was bought in bulk at a fixed price, sales came down and the machine was purchased; that the accountant had told him that refund of accumulated credit was available under the 'inverted tax structure' option; and that all the details, including the rates, had been shown in the statement of invoices. The statement of Mr. P, accountant, recorded on 11.02.2026 (RUD-9), confirms that the option was chosen without examining the rates;

6. AND WHEREAS it appears from the records that the principal input (polypropylene granules, 18%) and the output (plastic containers, 18%) are taxable at the same rate; the Noticee made no zero-rated supply; the ITC lying in the ledger arose from (a) a fall in sales, (b) purchases of granules of Rs.3,40,00,000/- against a consumption of Rs.1,46,00,000/-, leaving a closing stock of Rs.1,94,00,000/- carrying ITC of Rs.34,92,000/- (RUD-7), and (c) ITC of Rs.14,40,000/- on capital goods; and the turnover of 'inverted rated supply' for the purposes of Rule 89(5) was nil;

7. AND WHEREAS under the first proviso to Section 54(3) of the CGST Act, 2017, no refund of unutilised ITC is allowed in cases other than (i) zero-rated supplies made without payment of tax and (ii) cases where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies (other than nil-rated or fully exempt supplies); the Noticee's claim fell outside both clauses, and the refund of Rs.21,25,000/- was therefore not admissible and has been erroneously refunded to him;

8. AND WHEREAS the Noticee had disclosed the rates and the figures in the application and produced the records on summons, and there is no evidence of fraud, wilful misstatement or suppression of facts to evade tax; the erroneous refund is therefore appearing to be a case other than fraud, wilful misstatement or suppression of facts, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017/TGST Act, 2017;

9. AND WHEREAS it thus appears that the Noticee has contravened the provisions of the first proviso to Section 54(3) of the CGST Act, 2017 and Rule 89(5) of the CGST Rules, 2017 (and the corresponding provisions of the TGST Act, 2017), and that the aforesaid claim renders him liable to:

(a) demand and recovery of the amount erroneously refunded under Section 74A of the CGST Act, 2017/TGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/TGST Act, 2017; and

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/TGST Act, 2017;

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Cherlapally Industrial Area, Hyderabad, Telangana, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Medchal CGST Commissionerate, Hyderabad, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.21,25,000/- (Central tax Rs.10,62,500/- and Telangana State tax Rs.10,62,500/-) of unutilised input tax credit sanctioned to them by the order in FORM GST RFD-06 dated 08.12.2025 and paid on 11.12.2025 should not be held to have been erroneously refunded, as the credit had accumulated for reasons other than those specified in the first proviso to Section 54(3) of the CGST Act, 2017/TGST Act, 2017, the rate of tax on their inputs not being higher than the rate of tax on their output supplies and no zero-rated supply having been made;

(ii) the said amount of Rs.21,25,000/- (Rupees Twenty-One Lakh Twenty-Five Thousand only) should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/TGST Act, 2017, as called for by Section 74A(1), should not be charged and recovered on the amount at (ii) above, from 11.12.2025 till the date of payment;

(iv) a penalty of Rs.1,06,250/- (Central tax) and Rs.1,06,250/- (Telangana State tax), total Rs.2,12,500/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/TGST Act, 2017 (without prejudice to the benefit of nil penalty to which they may become entitled under Section 74A(8) on payment of the tax and interest within the time therein specified).

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017/TGST Act,

2017, whereby, if the tax at (ii) above and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded;

- the unutilised input tax credit of the Noticee is not lost by this notice; on deposit of the amount demanded with interest and penalty through FORM GST DRC-03, re-credit of the corresponding ITC to the electronic credit ledger may be sought under Rule 86(4B) of the CGST Rules, 2017, subject to the credit being otherwise available;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/TGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GSTR-3B and FORM GSTR-2B for April 2025 to August 2025;

RUD-2: Electronic credit ledger of M/s XXX for April 2025 to August 2025;

RUD-3: FORM GST RFD-01 dated 15.10.2025 with the statement of invoices and the Rule 89(5) computation;

RUD-4: Order in FORM GST RFD-06 dated 08.12.2025 and payment advice in FORM GST RFD-05;

RUD-5: Summons dated 02.02.2026 issued under Section 70 of the CGST Act, 2017, with proof of service;

RUD-6: Purchase and sales registers for April 2025 to August 2025;

RUD-7: Stock register of raw materials as on 31.08.2025 and the verification note dated 18.02.2026;

RUD-8: Statement of Mr. Z recorded under Section 70 on 10.02.2026;

RUD-9: Statement of Mr. P, accountant, recorded under Section 70 on 11.02.2026;

Annexure-A: Month-wise statement of outward supplies, ITC availed and credit ledger, with the Rule 89(5) computation and calculation of interest and penalty [as per the tables in the Situation and the working in Part B].

(_____)
Deputy Commissioner, CGST
Division - [•], Medchal CGST Commissionerate

Copy to: The Assistant Commissioner, CGST Division, for information and for review of the refund-sanctioning process.

Drafting note (not part of the notice):

- *The addressee, jurisdictional division/officer, F. No./DIN, GSTIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. Before issue the rates of tax and the notification entries for HSN 3902, HSN 3923 and the services should be re-checked against the rate notifications in force for April to August 2025 (the period before the rate changes of 22.09.2025).*
- ***Teaching point.** The grounds on which unutilised ITC can be refunded are exhaustive [proviso to Section 54(3)]: zero-rated supply without payment of tax, and inverted duty. A manufacturer whose inputs and outputs are at the same rate has no refund of 'accumulated ITC', whatever the reason (poor sales, stock, capital goods). The credit is not lost - it stays in the ledger. The officer's duty at the sanction stage is to ask first whether a ground exists and only then to apply the formula. Compare Exercise-36, where the inversion is real and the dispute is about the amount ('Net ITC' wrongly including input services), and Exercise-79, where the inversion is real for a part of the supplies and the rest of the supplies is nil-rated/exempt.*

- ***Refund of ITC vs refund of tax.*** *Section 54(1) refunds tax and interest actually paid (for example, tax paid on an exempt supply or paid twice - see Exercise-77, where the incidence test applies); Section 54(3) refunds ITC, which is a credit and not a payment, and only in two cases. Because the refund of unutilised ITC is not subject to the incidence test [Section 54(8)(b)], it is paid to the applicant, and not to the Consumer Welfare Fund.*
- ***Fraud or non-fraud?*** *A claim made under a wrong ground on the advice of the accountant, with the statement of invoices disclosing the rates and the records produced voluntarily, is a case of mistake and not fraud: Section 74A(5)(i) with the concession of Section 74A(8) is proposed. If the Noticee had, for instance, mis-stated the rates in the statement of invoices, or booked invoices of non-existent purchases, Section 74A(5)(ii) would be the charge.*
- ***Sanctioning officer's lapse.*** *The notice is a recovery notice against the applicant; the lapse of the sanctioning officer (no RFD-03/RFD-08, no examination of rates) is a matter for departmental review and is not part of the notice. The copy to the Assistant Commissioner is for that purpose.*
- *The draft should be settled by the jurisdictional Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018. Here the central tax involved is Rs.10,62,500/-, which is above Rs.10 lakh and up to Rs.1 crore, so the notice is issued by the Deputy/Assistant Commissioner and not by the Superintendent.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 79

Refund of accumulated ITC claimed under 'inverted duty structure' where part of the outward supply is nil-rated - proviso to Section 54(3)(ii), Rule 89(5) and Section 74A

Exercise 79: Refund of accumulated ITC claimed under 'inverted duty structure' where part of the outward supply is nil-rated - proviso to Section 54(3)(ii), Rule 89(5) and Section 74A

Situation in Brief:

1. M/s XXX Flour Mills, a proprietary concern of Mr. Z, situated at YYYY, Dewas Road, Indore, Madhya Pradesh, is registered under the CGST Act, 2017 and the Madhya Pradesh GST Act, 2017 and runs a roller flour mill that converts wheat into atta, maida and suji (HSN 1101/1103). Its supplies are of two kinds: (a) bulk supplies of flour in plain 50-kg polypropylene bags marked only 'Wheat Flour - 50 kg' (no brand, no MRP and no Legal Metrology declarations) to wholesalers and bakeries; and (b) retail packs of 1 kg, 5 kg and 10 kg under its registered brand 'XXX Gold', pre-packed with the declarations required by the Legal Metrology (Packaged Commodities) Rules, 2011 (net quantity, MRP, date of packing). Wheat is purchased from mandis and farmers and carries no tax. In July 2025 the bulk supplies were treated as nil-rated under the entry for wheat or meslin flour (HSN 1101) 'other than pre-packaged and labelled' in Notification No. 2/2017-Central Tax (Rate) (S.No. 73, as amended by Notification No. 7/2022-Central Tax (Rate) dated 13.07.2022), and the branded packs as taxable at 5% (2.5% central tax + 2.5% State tax).

2. The outward supplies of July 2025 as per FORM GSTR-1 (Table 8 for nil-rated supplies and Table 12 HSN summary) are:

Supply	HSN	Rate	Value (Rs.)	Tax (Rs.)
Bulk flour, 50-kg plain bags (not pre-packaged and labelled)	1101	Nil	2,40,00,000	Nil
Branded retail packs 1/5/10 kg (pre-packaged and labelled)	1101	5%	1,60,00,000	8,00,000
TOTAL			**4,00,00,000**	**8,00,000**

3. The inward supplies on which ITC was availed in FORM GSTR-3B for July 2025 (all invoices show tax at 18%, i.e. 9% central tax + 9% State tax) are as follows:

Inward supply	Value (Rs.)	ITC (Rs.)	Use in the mill
Poly-film pouches/packing material for retail packs (HSN 3923)	40,00,000	7,20,000	Branded retail packs only
Polypropylene 50-kg bags (HSN 3923)	30,00,000	5,40,000	Bulk (nil-rated) supplies only
Mill spares and consumables (rolls, sieves, belts)	10,00,000	1,80,000	Whole mill - common
Repair and maintenance of machinery (SAC 9987)	6,25,000	1,12,500	Whole mill - common
Advertising and brand promotion (input service)	8,50,000	1,53,000	Brand 'XXX Gold' only
Roller mill machine (capital goods)	25,00,000	4,50,000	Whole mill - common
TOTAL ITC availed		**21,55,500**	

4. The output tax of Rs.8,00,000/- (Rs.4,00,000/- each under central tax and State tax) was paid by utilisation of the ITC. No ITC was reversed under Rule 42 or Rule 43 in GSTR-3B for July 2025, and the closing balance in the electronic credit ledger on 31.07.2025 was Rs.13,55,500/- (Rs.6,77,750/- each under the central tax and State tax heads).

5. On 19.09.2025 M/s XXX filed FORM GST RFD-01 for the tax period July 2025 for refund of Rs.13,55,500/- under the category 'ITC accumulated due to inverted tax structure'. Its Rule 89(5) computation took

'turnover of inverted rated supply' as Rs.4,00,00,000/- (all outward supplies, including the nil-rated flour), 'adjusted total turnover' as Rs.4,00,00,000/-, Net ITC as Rs.21,55,500/- (all the ITC availed, including that on input services and capital goods), and tax payable as Rs.8,00,000/-, arriving at a maximum refund of Rs.13,55,500/-. No deficiency memo or notice in FORM GST RFD-08 was issued, and by an order in FORM GST RFD-06 dated 14.11.2025 the Assistant Commissioner sanctioned the entire Rs.13,55,500/- (Rs.6,77,750/- each), which was credited to the bank account of M/s XXX on 17.11.2025.

6. During the scrutiny of the refund order in January 2026, a summons dated 12.01.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z, who appeared on 20.01.2026 and produced the GSTR-1 and GSTR-3B returns, the HSN summary, the category-wise sales register, the item-wise purchase register, the stores issue slips of the packing material, the production register (flour packed in 50-kg bags and in retail packs), the specimen labels and the Legal Metrology registration of the brand.

7. The stores issue slips show that the 'poly-film pouches' were issued only to the retail packing line and the 50-kg bags only to the bulk bagging line, that the spares and the repairs were for the whole mill, and that the advertising expenditure was for the brand 'XXX Gold'. The production register shows that 60% of the flour produced by value in July 2025 went into the bulk bags.

8. In his statement recorded on 20.01.2026 under Section 70, Mr. Z stated that 60% of his sales are of unbranded flour in 50-kg bags, which are not taxed; that he buys packing material and services at 18% and sells branded flour at 5%; that he had not reversed any credit because 'the credit is used for the tax-paying sales also'; that he believed that 'the tax on inputs is more than the tax on outputs, so the whole credit can be refunded'; and that the refund application was prepared by his accountant on the same basis. The accountant, Mr. P, in his statement of 21.01.2026, said that he had taken all the outward supplies as 'inverted' because the rate on the inputs was higher than nil, and had taken the entire ITC in the ledger as 'Net ITC'.

9. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Inquiry on summons, Determination of Erroneous Refund under Section 74A, and Draft Show Cause Notice - M/s XXX Flour Mills, Prop. Mr. Z, Indore CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Madhya Pradesh Goods and Services Tax Act, 2017 [MPGST Act] and the Rules made under the two Acts):

1. **Clause (ii) of the first proviso to Section 54(3) of the CGST Act, 2017** - refund of unutilised ITC is allowed where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, 'other than nil-rated or fully exempt supplies' (and except supplies of goods or services notified by the Government on the recommendation of the Council). Only the branded packs, taxable at 5% against 18% on the packing material, are inverted rated supplies. The bulk flour is nil-rated, and no credit accumulated on it can be refunded under the proviso. The Noticee claimed refund of the credit attributable to the nil-rated supplies as well.
2. **Rule 89(5) of the CGST Rules, 2017** - the formula covers only the 'turnover of inverted rated supply of goods and services', which excludes nil-rated and exempt supplies; the 'Net ITC' is the ITC availed on inputs (goods) only, and not on input services or capital goods; and the 'adjusted total turnover' excludes exempt supplies other than zero-rated supplies. The Noticee's statement of Rs.4,00,00,000/- as inverted rated turnover and of Rs.21,55,500/- as Net ITC was wrong on both counts.
3. **Section 17(2) of the CGST Act, 2017 read with Rules 42 and 43 of the CGST Rules, 2017** - where inputs, input services or capital goods are used partly for taxable supplies and partly for exempt supplies, ITC is restricted to so much as is attributable to the taxable supplies, and the credit attributable to the exempt supplies has to be reversed (a nil-rated supply is an 'exempt supply' under Section 2(47)). No reversal was made in July 2025, although the ITC of Rs.7,20,000/- shown in the working in Part B was attributable to the nil-rated supplies.

Note: *(a) Wheat flour (HSN 1101) is not among the goods which have been notified under the proviso as ineligible for inverted-duty refund (Notification No. 5/2017-Central Tax (Rate), as amended); the claim fails only because of the nil-rated turnover, the excluded ITC and the formula. (b) The distinction between 'pre-packaged and labelled' goods (taxable at 5%) and the others (nil) turns, since 18.07.2022, on the Legal Metrology test, and not on the earlier test of 'unit container with a registered brand name'; packages of more than 25 kg are not 'pre-packaged and labelled' for this purpose. The classification of the bulk bags as nil-rated is not in dispute here. (c) Input services and capital goods were also wrongly included in Net ITC - the issue of Exercise-36 - but the main issue is the nil-rated turnover.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX/Mr. Z to the following action under the CGST Act, 2017 (read with the corresponding provisions of the MPGST Act, 2017):

1. Route chosen - the amount was refunded under an order in FORM GST RFD-06 and is recoverable as 'erroneously refunded' under **Section 74A(1)**, by a notice to the person to whom the refund was made. Review under Section 107(2) or revision under Section 108 is the alternative; the Noticee may argue that the sanction order cannot be corrected otherwise, and the position should be checked against the latest decisions of the jurisdictional High Court before issue.
2. The officer's computation (apportionment) - the refund admissible has been worked out in the following steps: (1) the outward supplies are classified, and the branded packs alone are 'inverted rated supply' (Table I); (2) the ITC attributable to the nil-rated supplies is excluded: the credit on the 50-kg bags is wholly attributable to them, the credit on the common inputs and services is apportioned in the ratio of exempt turnover to total turnover (Rs.2,40,00,000/- : Rs.4,00,00,000/- = 60%), and the credit on the common capital goods is reversed on the same ratio under Rule 43 (Table II); (3) Net ITC is the eligible ITC on inputs only; (4) the Rule 89(5) formula is applied (Table III); and (5) the result is compared

with the amount refunded.

3. Demand - under **Section 74A(1)**, Rs.12,03,500/- (Rs.6,01,750/- each under the CGST and MPGST Acts), being the refund of Rs.13,55,500/- less the admissible refund of Rs.1,52,000/-. The refund was made on 17.11.2025 (FY 2025-26), so Section 74A applies [Section 74A(12)]; the notice can be issued within forty-two months of the refund, i.e. up to 17.05.2029 [Section 74A(2)], and the order must be passed within twelve months of the notice [Section 74A(7)].

4. Interest - under **Section 50(1)** at 18% per annum from the date of the refund, 17.11.2025, till payment. Illustratively, up to 30.11.2026 (378 days), interest is Rs.2,24,346/- (Rs.1,12,173/- each under the CGST and MPGST Acts). Section 50(3) (24%) is not proposed, because the credit of Rs.7,20,000/- which should have been reversed was not used to pay tax but was paid out as part of the refund, and the demand is for the erroneous refund.

5. Penalty - under **Section 74A(5)(i)**, ten per cent of the tax due or Rs.10,000/-, whichever is higher, i.e. Rs.1,20,350/- (Rs.60,175/- each). Section 74A(5)(ii) is not proposed because the GSTR-1, the HSN summary and the RFD-01 computation themselves disclosed the nil-rated turnover of Rs.2,40,00,000/-, the records were produced on summons, and the error is one of understanding the formula (the accountant treated the nil-rated supplies as inverted); there is no evidence of wilful misstatement or suppression. The concession under **Section 74A(8)** is available: no notice if the tax and interest are paid before it, and no penalty if they are paid within sixty days of the notice.

6. Specific penalties - none under Section 122(1)(viii) (no fraud). No separate demand is made of the ITC of Rs.7,20,000/- which should have been reversed under Section 17(2), because it is included in the amount refunded and would otherwise be demanded twice; the Noticee is informed that it has to be treated as reversed.

7. Re-credit - of the Rs.12,03,500/- recovered, Rs.7,20,000/- is ITC to which the Noticee was never entitled (attributable to the nil-rated supplies) and cannot be re-credited. The balance of Rs.4,83,500/- is ITC validly available to him but not refundable; on deposit through FORM GST DRC-03 with interest and penalty it may be re-credited to the electronic credit ledger under Rule 86(4B) of the CGST Rules, 2017 (see Circular No. 174/06/2022-GST dated 06.07.2022), subject to the proper officer's processing.

8. Prosecution - not proposed; there is no fraud and the amount is well below the monetary limit of Section 132(1).

9. Teaching point - nil-rated and exempt outputs - the inverted-duty refund is meant for a taxable supplier whose output tax is lower than the tax on inputs. Nil-rated and exempt outputs are left out at three levels: (a) from the 'turnover of inverted rated supply' (the proviso excludes them by its words); (b) from the 'adjusted total turnover', which excludes exempt supplies other than zero-rated supplies; and (c) from the ITC, because ITC attributable to them is not available at all under Section 17(2). A mill with part nil-rated and part 5% output must therefore first reverse the credit attributable to the nil-rated supplies, and only then apply Rule 89(5) to the rest. Compare Exercise-78 (no inversion at all, and a refund claimed on a ground not recognised by Section 54(3)) and Exercise-36 (Net ITC wrongly including input services, with no nil-rated output).

Table I - Classification of outward supplies (July 2025):

Supply	Value (Rs.)	Rate	Inverted rated supply?	In adjusted total turnover?
Bulk flour, not pre-packaged and labelled	2,40,00,000	Nil	No - nil-rated (excluded by the proviso)	No - exempt supply
Branded retail packs	1,60,00,000	5%	Yes - input (packing) 18% > output 5%	Yes

Table II - Attribution of ITC (exempt turnover ratio E/F = 2,40,00,000 / 4,00,00,000 = 60%):

Item	ITC availed (Rs.)	Nature of use	Reversal (Rs.)	Eligible ITC (Rs.)
Retail packing material	7,20,000	Taxable only	Nil	7,20,000

Item	ITC availed (Rs.)	Nature of use	Reversal (Rs.)	Eligible ITC (Rs.)
50-kg bags	5,40,000	Nil-rated only	5,40,000	Nil
Mill spares/consumables	1,80,000	Common - 60% exempt	1,08,000	72,000
Repairs and maintenance	1,12,500	Common - 60% exempt	67,500	45,000
Advertising (brand)	1,53,000	Taxable only	Nil	1,53,000
Roller mill (Rule 43, 1/60th per month)	4,50,000	Common - 60% exempt	4,500	Not in Net ITC
TOTAL	**21,55,500**		**7,20,000**	**Inputs 7,92,000; services 1,98,000**

Table III - Rule 89(5) computation (claimant's and correct):

Particulars	Claimant's working (Rs.)	Correct working (Rs.)
Turnover of inverted rated supply	4,00,00,000	1,60,00,000
Adjusted total turnover (exempt supplies excluded)	4,00,00,000	1,60,00,000
Net ITC (ITC on inputs only, after attribution)	21,55,500	7,92,000
Term 1 = inverted turnover x Net ITC / Adjusted total turnover	21,55,500	7,92,000
Term 2 = tax payable on inverted supply (8,00,000) x Net ITC / ITC on inputs and input services (7,92,000 / 9,90,000)	8,00,000	6,40,000
Maximum refund amount (Term 1 - Term 2), limited to the balance in the ledger	13,55,500	1,52,000
Refund sanctioned on 14.11.2025 / refund admissible	13,55,500	1,52,000
Erroneously refunded		**12,03,500**

Particulars	Central tax (Rs.)	MPGST (Rs.)	Total (Rs.)
Refund erroneously made on 17.11.2025 (74A(1))	6,01,750	6,01,750	12,03,500
Interest @18% from 17.11.2025 to 30.11.2026 (378 days)	1,12,173	1,12,173	2,24,346
Penalty under 74A(5)(i) (10% of tax)	60,175	60,175	1,20,350
TOTAL	**7,74,098**	**7,74,098**	**15,48,196**

Basis: *The formula is that of Rule 89(5) as amended with effect from 05.07.2022 (second term multiplied by Net ITC / ITC availed on inputs and input services). In the working, 'ITC availed on inputs and input services' (denominator of the second term) is taken as the credit eligible after attribution under Section 17(2), because credit attributable to exempt supplies is not available at all. If the gross credit of Rs.17,05,500/- (inputs and input services before attribution) were taken instead, the second term would be Rs.3,71,504/- and the admissible refund would be about Rs.4,20,496/- (so the demand would be lower by about Rs.2,68,496/-); the Noticee may raise this point, and the notice therefore gives the full working. Interest is simple interest at 18% on the actual number of days divided by 365.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Flour Mills, a proprietary concern of Mr. Z, situated at YYYY, Dewas Road, Indore, Madhya Pradesh, and Mr. Z, Proprietor of M/s XXX Flour Mills, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Indore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.13,55,500/- (Central tax Rs.6,77,750/- and Madhya Pradesh State tax Rs.6,77,750/-) of unutilised input tax credit sanctioned to them by the order in FORM GST RFD-06 dated 14.11.2025 and paid on 17.11.2025 should not be held to have been erroneously refunded to the extent of Rs.12,03,500/-, being (a) the credit attributable to nil-rated supplies, (b) the credit on input services and capital goods, and (c) the amount in excess of the maximum refund of Rs.1,52,000/- admissible under clause (ii) of the first proviso to Section 54(3) of the CGST Act, 2017/MPGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017, and Section 17(2) read with Rules 42 and 43;

(ii) the said amount of Rs.12,03,500/- (Rupees Twelve Lakh Three Thousand Five Hundred only) (Central tax Rs.6,01,750/- and State tax Rs.6,01,750/-) should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017, as called for by Section 74A(1), should not be charged and recovered on the amount at (ii) above, from 17.11.2025 till the date of payment;

(iv) a penalty of Rs.60,175/- (Central tax) and Rs.60,175/- (Madhya Pradesh State tax), total Rs.1,20,350/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit of nil penalty to which they may become entitled under Section 74A(8) on payment of the tax and interest within the time therein specified).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[•]/2026-INDORE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [•], Division - [•], Indore CGST Commissionerate, Madhya Pradesh

Date: [•].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Madhya Pradesh Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX Flour Mills (GSTIN: [•]),
YYYY, Dewas Road, Indore, Madhya Pradesh.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX Flour Mills and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX Flour Mills, a regular registered person, runs a roller flour mill at Indore and in July 2025 made (a) bulk supplies of wheat flour (HSN 1101) in 50-kg plain bags, not pre-packaged and labelled, of Rs.2,40,00,000/-, on which no tax is payable, and (b) supplies of branded retail packs (1/5/10 kg), pre-packaged and labelled, of Rs.1,60,00,000/-, on which tax of Rs.8,00,000/- at 5% was payable and paid (RUD-1, RUD-2);

2. AND WHEREAS in FORM GSTR-3B for July 2025 the Noticee availed ITC of Rs.21,55,500/-, being Rs.14,40,000/- on inputs (packing material and mill spares), Rs.2,65,500/- on input services (repairs and advertising) and Rs.4,50,000/- on capital goods (roller mill), paid the output tax of Rs.8,00,000/- by utilising the ITC without reversing any ITC under Rule 42 or Rule 43, and carried a balance of Rs.13,55,500/- in the electronic credit ledger (RUD-3);

3. AND WHEREAS the Noticee filed an application in FORM GST RFD-01 on 19.09.2025 for the tax period July 2025 for refund of Rs.13,55,500/- under the category 'ITC accumulated due to inverted tax structure', in which the entire outward supplies of Rs.4,00,00,000/- (including the nil-rated supplies of Rs.2,40,00,000/-) were shown as 'turnover of inverted rated supply' and the entire ITC of Rs.21,55,500/- (including the ITC on input services and capital goods) as Net ITC (RUD-4);

4. AND WHEREAS by an order in FORM GST RFD-06 dated 14.11.2025 (RUD-5) the Assistant Commissioner sanctioned Rs.13,55,500/- (Rs.6,77,750/- central tax and Rs.6,77,750/- State tax), which was credited to the bank account of the Noticee on 17.11.2025;

5. AND WHEREAS a summons dated 12.01.2026 under Section 70 of the CGST Act, 2017 was issued to Mr. Z (RUD-6), in response to which he appeared on 20.01.2026 and produced the GSTR-1/GSTR-3B returns, the HSN summary, the sales and purchase registers, the stores issue slips, the production register and specimen labels (RUD-1, RUD-7 to RUD-9);

6. AND WHEREAS the scrutiny of these records showed that the packing material for retail packs (ITC Rs.7,20,000/-) and the advertising (ITC Rs.1,53,000/-) relate only to the taxable branded supplies; that the 50-kg bags (ITC Rs.5,40,000/-) relate only to the nil-rated bulk supplies; that the mill spares (ITC Rs.1,80,000/-), the repairs (ITC Rs.1,12,500/-) and the roller mill (ITC Rs.4,50,000/-) are used commonly; and that 60% of the turnover (Rs.2,40,00,000/- out of Rs.4,00,00,000/-) consists of nil-rated supplies (Annexure-A);

7. AND WHEREAS in his statement recorded on 20.01.2026 under Section 70 (RUD-10) Mr. Z stated, inter alia, that 60% of his sales are of unbranded flour in 50-kg bags which are not taxed; that he buys packing material and services at 18% and sells branded flour at 5%; that no credit was reversed; and that he believed that the whole credit was refundable as the tax on inputs was more than the tax on outputs.

The statement of Mr. P, accountant, recorded on 21.01.2026 (RUD-11), confirms that all the supplies were taken as 'inverted' and the whole ITC as 'Net ITC';

8. AND WHEREAS under clause (ii) of the first proviso to Section 54(3) of the CGST Act, 2017 refund of unutilised ITC on account of inverted duty is allowed where the rate of tax on inputs is higher than the rate on output supplies, other than nil-rated or fully exempt supplies; under Rule 89(5) of the CGST Rules, 2017 the refund is computed on the turnover of the inverted rated supply and on the ITC availed on inputs (and not on input services and capital goods), the adjusted total turnover excluding the exempt supplies; and under Section 17(2) read with Rules 42 and 43 the ITC attributable to exempt supplies (which include nil-rated supplies under Section 2(47)) is not available;

9. AND WHEREAS on that basis the ITC attributable to the nil-rated supplies is Rs.7,20,000/- (Rs.5,40,000/- on 50-kg bags, Rs.1,08,000/- on mill spares, Rs.67,500/- on repairs and Rs.4,500/- on the roller mill for the month); the Net ITC eligible for the refund is Rs.7,92,000/- (inputs); the eligible ITC on inputs and input services is Rs.9,90,000/-; the turnover of inverted rated supply and the adjusted total turnover are Rs.1,60,00,000/-; and the maximum refund admissible under Rule 89(5) is Rs.7,92,000/- less Rs.8,00,000/- x 7,92,000/9,90,000 (Rs.6,40,000/-), i.e. Rs.1,52,000/-, so that Rs.12,03,500/- (Rs.13,55,500/- less Rs.1,52,000/-) has been erroneously refunded;

10. AND WHEREAS the nil-rated turnover was disclosed in the GSTR-1, the HSN summary and the refund application itself, the records were produced on summons and no evidence of fraud, wilful misstatement or suppression of facts to evade tax has been found; the erroneous refund is therefore appearing to be a case other than fraud, wilful misstatement or suppression of facts, attracting penalty under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017;

11. AND WHEREAS it thus appears that the Noticee has contravened clause (ii) of the first proviso to Section 54(3) and Section 17(2) of the CGST Act, 2017 and Rules 42, 43 and 89(5) of the CGST Rules, 2017 (and the corresponding provisions of the MPGST Act, 2017), and that the aforesaid claim renders him liable to:

(a) demand and recovery of the amount erroneously refunded under Section 74A of the CGST Act, 2017/MPGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017; and

(c) penalty under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017;

NOW, THEREFORE

M/s XXX Flour Mills, a proprietary concern of Mr. Z, situated at YYYY, Dewas Road, Indore, Madhya Pradesh, and Mr. Z, Proprietor of M/s XXX Flour Mills, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Indore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the refund of Rs.13,55,500/- (Central tax Rs.6,77,750/- and Madhya Pradesh State tax Rs.6,77,750/-) of unutilised input tax credit sanctioned to them by the order in FORM GST RFD-06 dated 14.11.2025 and paid on 17.11.2025 should not be held to have been erroneously refunded to the extent of Rs.12,03,500/-, being (a) the credit attributable to nil-rated supplies, (b) the credit on input services and capital goods, and (c) the amount in excess of the maximum refund of Rs.1,52,000/- admissible under clause (ii) of the first proviso to Section 54(3) of the CGST Act, 2017/MPGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017, and Section 17(2) read with Rules 42 and 43;

(ii) the said amount of Rs.12,03,500/- (Rupees Twelve Lakh Three Thousand Five Hundred only) (Central tax Rs.6,01,750/- and State tax Rs.6,01,750/-) as detailed in Annexure-A to this notice, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017, as called for by Section 74A(1), should not be charged and recovered on the amount at (ii) above, from 17.11.2025 till the date of payment;

(iv) a penalty of Rs.60,175/- (Central tax) and Rs.60,175/- (Madhya Pradesh State tax), total Rs.1,20,350/-, being ten per cent of the tax due, should not be imposed on them under Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit of nil penalty to which they may become entitled under Section 74A(8) on payment of the tax and interest within the time therein specified).

12. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017/MPGST Act, 2017, whereby, if the tax at (ii) above and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded;
- of the amount demanded, ITC of Rs.7,20,000/- is attributable to nil-rated supplies and is not available to the Noticee; in respect of the balance ITC (Rs.4,83,500/-), re-credit to the electronic credit ledger may be sought under Rule 86(4B) of the CGST Rules, 2017 on deposit of the amount through FORM GST DRC-03, subject to the credit being otherwise available;
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/MPGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GSTR-1 (with HSN summary) and category-wise sales register for July 2025;

RUD-2: Specimen labels of the brand 'XXX Gold' and of the 50-kg bags, and Legal Metrology registration;

RUD-3: FORM GSTR-3B and FORM GSTR-2B for July 2025 and the electronic credit ledger;

RUD-4: FORM GST RFD-01 dated 19.09.2025 with the statement of invoices and the Rule 89(5) computation;

RUD-5: Order in FORM GST RFD-06 dated 14.11.2025 and payment advice in FORM GST RFD-05;

RUD-6: Summons dated 12.01.2026 issued under Section 70 of the CGST Act, 2017, with proof of service;

RUD-7: Item-wise purchase register and stores issue slips of packing material;

RUD-8: Production register for July 2025;

RUD-9: Invoices of purchase of the roller mill, mill spares, repairs and advertising services;

RUD-10: Statement of Mr. Z recorded under Section 70 on 20.01.2026;

RUD-11: Statement of Mr. P, accountant, recorded under Section 70 on 21.01.2026;

Annexure-A: Classification of outward supplies, attribution of ITC, Rule 89(5) computation, and calculation of interest and penalty [as per Tables I to III and the working in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Indore CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Indore, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN, GSTIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The tax treatment of wheat flour and of the packing material has been taken for July 2025, i.e. before the rate changes of 22.09.2025 (the exemption for flour 'other than pre-packaged and labelled' continues in the new exemption notification, but the entry numbers differ); the rates and entry numbers should be re-checked before issue.*
- ***Teaching point - apportionment.*** *In a refund claim under Section 54(3)(ii) the officer must separate (a) the inverted rated supplies, (b) the nil-rated/exempt supplies, which are outside the refund and bring in the reversal under Section 17(2)/Rules 42-43, and (c) the credit on input services and capital goods, which is outside Net ITC. The refund is then worked out on the formula. Compare Exercise-36 (inverted duty is real, all supplies are taxable, and the error is only that input services were included in Net ITC) and Exercise-78 (no inversion at all, claim on a ground that Section 54(3) does not recognise).*
- ***Choice of the nil-rated item.*** *Wheat flour (HSN 1101) not pre-packaged and labelled is exempt under Notification No. 2/2017-CT(Rate); the older test of 'unit container bearing a registered brand name' was replaced from 18.07.2022 by 'pre-packaged and labelled', and a package of more than 25 kg is not a 'pre-packaged commodity' for this purpose. The classification of the two lines of products is a question of fact (label, Legal Metrology declarations, pack size); the officer should keep specimen labels (RUD-2).*
- ***Fraud or non-fraud?*** *The nil-rated turnover was disclosed in the returns and in the application, and the error lay in the use of the formula; Section 74A(5)(i) with the concession of Section 74A(8) is proposed. If the Noticee had split the invoices or mis-described the branded packs as unbranded (or the reverse) to increase the inverted turnover, Section 74A(5)(ii) would be the charge. The charge must always be supported by the evidence discussed in the body of the notice.*
- ***Computation caution.*** *The treatment of the credit in the denominator of the second term of the formula (ITC availed on inputs and input services - gross or after attribution) and the treatment of the credit attributable to exempt supplies are matters on which the Noticee may take a different view; the notice therefore gives the working in full (Annexure-A) so that he can respond to each step.*
- *The draft should be settled by the jurisdictional Range/Division before issue (DRC-01), including verification of the monetary-limit-based issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh). Here the central tax involved is Rs.6,01,750/-, within the Superintendent's limit.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 80

Misclassification of outward supply at a lower rate of tax to generate an artificial inverted duty refund - Proviso (ii) to Section 54(3), Rule 89(5), Section 74A and Section 122(1)(viii)

Exercise 80: Misclassification of outward supply at a lower rate of tax to generate an artificial inverted duty refund - Proviso (ii) to Section 54(3), Rule 89(5), Section 74A and Section 122(1)(viii)

Situation in Brief:

1. M/s XXX, a proprietary concern of Mr. Z, with its factory at YYYY Industrial Estate, Coimbatore, Tamil Nadu (GSTIN 33XXXXX0000X1Z0), manufactures PVC-coated polyester fabric (marketed as 'XXX Tarp-Cloth', coating weight 650 gsm) used by truck-body builders and tarpaulin stitchers for truck covers and shed covers. The Noticee buys (a) grey woven polyester fabric (HSN 5407, taxed at 5%), and (b) PVC compound, plasticiser and pigments (taxed at 18%), and receives input services (calendering, coating-line maintenance and freight, taxed at 18%). All outward supplies are made to customers in Tamil Nadu. The Noticee is a regular taxpayer and files FORM GSTR-1 and FORM GSTR-3B monthly.

2. Till March 2025, the Noticee reported the fabric in its FORM GSTR-1 HSN summary under HSN 5903 and paid tax at 12% (6% CGST + 6% TNGST). It made no refund claim during FY 2023-24 or in FY 2024-25. From April 2025 the same product (same product code, same coating line, same price list) was reported under HSN 5407 at 5% (2.5% CGST + 2.5% TNGST), and from the return for April 2025 the Noticee claimed refund of accumulated input tax credit under proviso (ii) to Section 54(3) of the CGST Act, 2017 read with Rule 89(5), in FORM GST RFD-01, every month. Refunds were claimed for the five tax periods April 2025 to August 2025 (the periods before the rate changes of 22.09.2025; later periods are outside this exercise) and were sanctioned in FORM GST RFD-06 and credited to the bank account of the Noticee, as follows:

Tax period	RFD-01 filed on	RFD-06 sanctioned on	Refund sanctioned (Rs.)
April 2025	14.06.2025	30.06.2025	1,52,368
May 2025	16.07.2025	31.07.2025	1,74,912
June 2025	18.08.2025	02.09.2025	1,67,860
July 2025	17.09.2025	03.10.2025	1,84,094
August 2025	16.10.2025	31.10.2025	1,70,536
TOTAL			**8,49,770**

3. The monthly turnover, the purchases and the credit position as per the returns for the five months were as follows (all values excluding tax). The input tax credit has been worked at 5% on grey fabric, and at 18% on PVC compound/chemicals and on input services; each month the output tax at 5% was paid wholly through the electronic credit ledger, and no cash was paid:

Month	Turnover (Rs.)	Grey fabric @5% (Rs.)	PVC compound etc. @18% (Rs.)	Input services @18% (Rs.)
April 2025	62,40,000	31,00,000	15,50,000	2,60,000
May 2025	71,10,000	35,60,000	17,70,000	2,90,000
June 2025	68,50,000	34,20,000	17,10,000	2,70,000
July 2025	74,80,000	37,30,000	18,70,000	3,00,000
August 2025	69,20,000	34,50,000	17,30,000	2,80,000
TOTAL	**3,46,00,000**	**1,72,60,000**	**86,30,000**	**14,00,000**

4. The refund claims were picked up in the post-refund review of the Commissionerate in January 2026 because the HSN of the product had changed in April 2025 with no change in the product, and the refund claimed in each month was about 2.5% of the turnover. An inspection under Section 71 of the CGST Act, 2017 was conducted at the factory on 10.03.2026 in the presence of Mr. Z; a sample of the roll in production (batch 25-0312) was drawn under a mahazar and sent to a NABL-accredited

laboratory. The test report dated 02.04.2026 states that the sample is 'woven polyester base fabric coated on both sides with plasticised PVC; coating mass 410 g/sq.m of 650 g/sq.m total; coating visible to the naked eye; not a fabric in which the coating is only incidental'.

5. The following documents were collected on summons dated 20.03.2026 under Section 70 and by search of the website: (a) the product catalogue and the website page of the Noticee, which describe the product as 'PVC coated polyester fabric / tarpaulin cloth - HSN 5903 - GST 12%'; (b) the customer purchase orders and the e-way bills generated for the movement of goods (sample of 40), of three truck-body builders, which describe the goods as 'PVC coated fabric' with HSN 5903; (c) the sales invoices for April 2025 to August 2025, which show HSN 5407 at 5%; (d) the 'GST classification note' of the accountant of the Noticee; and (e) a mail dated 28.03.2025 from the accountant, Mr. P, to Mr. Z, retrieved from the computer of the Noticee on 10.03.2026, reading, in the relevant part: 'From April, we can show the cloth under 5407 at 5%. Our inputs are at 18% and the greige cloth at 5%, so credit will pile up and we can file refund every month. At 5903 the rate is 12% and there will be no refund because output tax is more than the credit. Customers will not object because the product is the same and they get credit anyway.'

6. The statement of Mr. Z was recorded on 15.05.2026 under Section 70, wherein he stated, inter alia, that: (a) the product has been the same since 2019, and has always been sold as PVC coated fabric; (b) up to March 2025 the HSN 5903 at 12% was used; (c) on the advice of his accountant, he changed the HSN to 5407 from April 2025, and 'did not ask whether the classification was right, as the CA said the refund will come'; (d) he had read the e-mail of 28.03.2025 and replied 'ok, do it'; (e) he did not seek an advance ruling or any clarification from the department; and (f) he has no technical or legal opinion supporting the classification under 5407. Mr. P, the accountant, appeared on 22.05.2026 and confirmed the e-mail and that the change was suggested solely to obtain the refund.

7. The department has worked out the position as follows: (i) the correct classification of the product is HSN 5903 (textile fabrics impregnated, coated, covered or laminated with plastics), taxable at 12% (6% CGST + 6% TNGST) under Notification No. 1/2017-Central Tax (Rate) as in force for the period April 2025 to August 2025 (and the corresponding Tamil Nadu notification); (ii) at 12%, the output tax is higher than the total input tax credit, so there is no accumulation of credit by reason of the rate of tax on inputs being higher than the rate on output, and no refund is admissible under Section 54(3), proviso (ii); (iii) the Noticee had paid output tax at 5% and has therefore also short-paid tax. No tax is collected by the Noticee from the customers beyond the 5% shown in the invoices.

8. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(Refund review, Inspection and Summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Coimbatore CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Tamil Nadu Goods and Services Tax Act, 2017 [TNGST Act] and the Rules made under the two Acts):

1. **Section 9(1) of the CGST Act, 2017 read with Notification No. 1/2017-Central Tax (Rate)** - short payment of tax: PVC-coated fabric of HSN 5903 is taxable at 12% (6% + 6%), but the Noticee paid tax at 5% (2.5% + 2.5%) for April to August 2025 by declaring the product under HSN 5407; the tax short-paid on the taxable value of Rs.3,46,00,000/- is Rs.24,22,000/-.
2. **Proviso (ii) to Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017** - claim of refund of unutilised input tax credit on the ground of inverted duty structure when, on the correct classification and rate (12%), the credit has not accumulated 'on account of rate of tax on the inputs being higher than the rate of tax on output supplies'; the refund claimed and sanctioned, Rs.8,49,770/-, was therefore not admissible and stands erroneously refunded.
3. **Rule 89 of the CGST Rules, 2017 read with the declarations in FORM GST RFD-01** - the particulars furnished in support of the refund claims (HSN, rate of tax, turnover of inverted rated supply) were incorrect; the correct classification was apparent from the Noticee's own records and catalogue.
4. **Section 37(1) read with Rule 59 of the CGST Rules, 2017** - the outward supplies in FORM GSTR-1 (HSN summary and rate of tax) were furnished with wrong particulars for April 2025 to August 2025, and invoices issued under **Section 31 read with Rule 46** carried a wrong HSN and rate of tax.

Note: *The charge of misclassification alone (the first limb) would have been the subject of Exercise-18. Here the classification is not the end of the matter: it is the means by which a refund has been obtained. The distinguishing element - the intention - is the reason why proviso (ii) to Section 54(3) and Section 122(1)(viii) are brought in. Section 122(1A) is not attracted as it applies to the clauses (i), (ii), (vii) and (ix) of Section 122(1) only (and not to clause (viii)); the Master Chart reference to Section 122(1A) in some rows of Template VII must not be copied here.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the TNGST Act, 2017). The notice must be built on two limbs - (I) recovery of the refund erroneously granted, and (II) recovery of the output tax short-paid - because the one does not cover the other:

1. Route - the refund was granted and the supplies were made in FY 2025-26, so both limbs are determined under **Section 74A(1)**, which covers tax 'not paid or short paid or erroneously refunded'. One notice is issued for both limbs and for the five tax periods. Registration is not affected. The matter is not one of Section 73/74 (periods up to FY 2023-24).
2. Limitation - **Section 74A(2)**: for the short-paid tax, 42 months from the due date of the annual return for FY 2025-26 (31.12.2026), i.e. up to 30.06.2030; for the erroneous refund, 42 months from the date of the erroneous refund (first refund 30.06.2025, so up to 30.12.2028; the Master Chart Annexure A reads the section this way). The order must be passed within 12 months of the notice, extendable by six months [Section 74A(7)].
3. Demand - limb I (refund) - the refund admissible on the correct classification is worked below under Rule 89(5) as nil for each month; the entire refund of Rs.8,49,770/- (Rs.4,24,885/- each under CGST and TNGST) is therefore demanded as erroneously refunded.
4. Demand - limb II (short-paid tax) - tax at 12% on the declared value of Rs.3,46,00,000/- is Rs.41,52,000/-; the tax paid at 5% was Rs.17,30,000/-; the short-paid tax is Rs.24,22,000/- (Rs.12,11,000/- each under CGST and TNGST). The output tax was shown in the invoices at 5% and no

cum-tax benefit arises.

5. Interest - **Section 50(1)** at 18% per annum (a) on the short-paid tax, from the day after the due date of FORM GSTR-3B for each month (20th of the following month) till payment, which up to 30.11.2026 is Rs.5,92,504/-, and (b) on the erroneous refund, from the date of the refund order (sanction) till payment, which is Rs.1,90,134/- up to 30.11.2026; total Rs.7,82,638/- (Rs.3,91,319/- each). Interest at 24% under Section 50(3) read with Rule 88B is not proposed because this is not a case of ITC wrongly availed and utilised. *Note on limb I:* the date from which interest on an erroneous refund runs is not spelt out in Section 50 in terms; the notice calls for interest 'payable under Section 50' as Section 74A(1) requires, from the date of the refund order, and the adjudicating authority will decide the point.

6. Penalty - fraud or non-fraud? A classification dispute is not fraud, and a taxpayer who holds a reasonable belief that his product falls under the lower-rate entry cannot be charged with suppression merely because the department later takes a different view. The reasonable-belief defence fails here, on the evidence: (a) the Noticee classified the same product under HSN 5903 at 12% till March 2025, and the same product was described under HSN 5903 in its catalogue, website, customer purchase orders and e-way bills even in the period under review; (b) the HSN was changed in April 2025 with no change in the product, the process or the price list; (c) the e-mail of 28.03.2025 states in terms that the object of the change was to create an inverted duty structure to claim refund every month, and Mr. Z replied 'ok, do it'; (d) Mr. Z had no technical, legal or advance-ruling basis; and (e) the test report shows the coating to be visible and substantial. Therefore the default is by reason of wilful misstatement and suppression of facts to evade tax and obtain refund, and a penalty equal to the tax is proposed under **Section 74A(5)(ii)**, i.e. Rs.32,71,770/- (Rs.16,35,885/- each under CGST and TNGST) on both limbs. If the adjudicating authority holds that the Noticee's belief was bona fide, the penalty falls to Section 74A(5)(i) (10% of tax or Rs.10,000, whichever is higher) and the benefit of Section 74A(8) opens; the notice says so.

7. Specific offence penalty - **Section 122(1)(viii)** (a person who 'fraudulently obtains refund of tax under this Act') is proposed in the alternative and without prejudice, subject to Section 75(13) and Section 126; the penalty at (6) already covers the same amount, so no second penalty is to be imposed for the same act. Section 122(1)(xvii)/(i) are not proposed; invoices were issued for real supplies.

8. Concessions - **Section 74A(9)** (as used in Exercises 49 and 52): the Noticee may pay the tax, interest and 15% of the tax as penalty before the notice, 25% within 60 days of the notice, or 50% within 60 days of the order, and have the proceedings concluded.

9. Recovery - Sections 78 and 79; the confirmed amount can be recovered by the modes in Section 79. Provisional attachment under Section 83 is considered not necessary because the factory and the machinery are with the Noticee and the amount is small relative to the assets; Rule 86A blocking of credit may be considered if a balance accrues.

10. Prosecution - Section 132(1)(e) (fraudulently obtaining refund) has been considered; the refund fraudulently obtained (Rs.8.50 lakh) and the tax evaded (Rs.24.22 lakh) are below the Rs.1 crore threshold of Section 132(1), so no prosecution is proposed. If later periods are added, the aggregate must be re-tested against the thresholds.

11. Alternative route - rejection of the claim (FORM GST RFD-06 rejection order) was the proper course if the classification had been examined before sanction. The refund having been sanctioned, recovery under Section 74A is the route.

Illustrative working of the refund admissible under Rule 89(5) (maximum refund amount) - declared classification (5%) versus correct classification (12%):

Rule 89(5) as amended by Notification No. 14/2022-Central Tax with effect from 05.07.2022: Maximum Refund Amount = {(Turnover of inverted rated supply of goods x Net ITC / Adjusted Total Turnover) - Tax payable on such inverted rated supply x (Net ITC / ITC availed on inputs and input services)}, where Net ITC is the credit on inputs (excluding input services and capital goods) availed during the relevant period. Since the whole turnover of the Noticee is of the inverted rated supply, the first term reduces to Net ITC. For April 2025: Net ITC = 5% x 31,00,000 + 18% x 15,50,000 = Rs.4,34,000; total ITC on inputs and input services = Rs.4,80,800; at 5%: tax payable = Rs.3,12,000; maximum refund = 4,34,000 - 3,12,000 x (4,34,000/4,80,800) = Rs.1,52,368

(rounded to an even rupee for the head-wise split). At 12%: tax payable = Rs.7,48,800; the second term (about 6,75,913) exceeds Net ITC (4,34,000), so the maximum refund is nil.

Month	Net ITC (Rs.)	Total ITC (Rs.)	Refund claimed on 5% (Rs.)	Refund on correct 12% (Rs.)
April 2025	4,34,000	4,80,800	1,52,368	0
May 2025	4,96,600	5,48,800	1,74,912	0
June 2025	4,78,800	5,27,400	1,67,860	0
July 2025	5,23,100	5,77,100	1,84,094	0
August 2025	4,83,900	5,34,300	1,70,536	0
TOTAL	**24,16,400**	**26,68,400**	**8,49,770**	**0**

Illustrative working of the demand and interest (up to 30.11.2026):

Month	Tax at 12% (Rs.)	Tax paid at 5% (Rs.)	Short-paid tax (Rs.)	Interest on short-paid tax (Rs.)
April 2025	7,48,800	3,12,000	4,36,800	1,20,414
May 2025	8,53,200	3,55,500	4,97,700	1,29,592
June 2025	8,22,000	3,42,500	4,79,500	1,17,760
July 2025	8,97,600	3,74,000	5,23,600	1,20,586
August 2025	8,30,400	3,46,000	4,84,400	1,04,152
TOTAL	**41,52,000**	**17,30,000**	**24,22,000**	**5,92,504**

Particulars	Tax (Rs.)	Interest to 30.11.2026 (Rs.)	Penalty 74A(5)(ii) (Rs.)	Total (Rs.)
Limb I - erroneous refund	8,49,770	1,90,134	8,49,770	18,89,674
Limb II - short-paid tax	24,22,000	5,92,504	24,22,000	54,36,504
TOTAL	**32,71,770**	**7,82,638**	**32,71,770**	**73,26,178**

Basis: *(1) Interest is simple, 18%, for actual days/365: on short-paid tax from the 21st of the month following the tax period to 30.11.2026; on the refund from the day after the refund order. (2) The two limbs overlap economically: the refunded credit was legitimately availed credit, and if it is recovered in cash the Noticee should not suffer twice. The notice demands both limbs in full; at adjudication, credit of the input tax credit that is found to be admissible and is actually available (including any re-credit of the refunded amount to the electronic credit ledger on its recovery) can be adjusted against the short-paid tax, so that the net cash outgo is about Rs.14,83,600/- (tax at 12% less the total ITC of the five months). (3) The split between CGST and TNGST is equal for every column of the last table (central tax Rs.16,35,885/-, interest Rs.3,91,319/-, penalty Rs.16,35,885/-), being the pattern of the RFD-06 orders. (4) The demand of limb II is of the tax on the value as declared; the customers' ITC at 5% is a matter between the department and the recipients and is outside this notice.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY Industrial Estate, Coimbatore, Tamil Nadu, and Mr. Z, Proprietor of M/s XXX, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX and Mr. Z being one and the same person in law), are hereby called upon to

show cause in writing to the Deputy/Assistant Commissioner of CGST, Coimbatore Division, Coimbatore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the PVC-coated polyester fabric manufactured and supplied by them during April 2025 to August 2025 should not be held to be classifiable under HSN 5903 and taxable at 12% (6% CGST + 6% TNGST) under Notification No. 1/2017-Central Tax (Rate)/the corresponding TNGST notification, and not under HSN 5407 at 5%;

(ii) an amount of Rs.12,11,000/- (Central tax) and Rs.12,11,000/- (Tamil Nadu State tax), total Rs.24,22,000/- (Rupees Twenty-Four Lakh Twenty-Two Thousand only), being the tax short-paid on the taxable value of Rs.3,46,00,000/- as detailed in Annexure-A, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017;

(iii) an amount of Rs.4,24,885/- (Central tax) and Rs.4,24,885/- (Tamil Nadu State tax), total Rs.8,49,770/- (Rupees Eight Lakh Forty-Nine Thousand Seven Hundred and Seventy only), being the refund of accumulated input tax credit sanctioned in FORM GST RFD-06 on the five dates stated in Annexure-B and not admissible in view of proviso (ii) to Section 54(3) read with Rule 89(5), should not be demanded and recovered from them as erroneously refunded, under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017;

(iv) interest under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 should not be charged and recovered on the tax at (ii) from the due dates of FORM GSTR-3B of the respective months, and on the amount at (iii) from the dates of the refund orders, till the date of payment;

(v) a penalty of Rs.16,35,885/- (Central tax) and Rs.16,35,885/- (Tamil Nadu State tax), total Rs.32,71,770/-, being equal to the tax at (ii) and (iii) above, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 (without prejudice to the benefit available under Section 74A(9), and, in the alternative, if it is held that fraud, wilful misstatement or suppression is not established, under Section 74A(5)(i) with the benefit of Section 74A(8));

(vi) penalty should not separately be imposed on them under Section 122(1)(viii) of the CGST Act, 2017/TNGST Act, 2017 for fraudulently obtaining refund of tax, without prejudice to (v) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-COIMBATORE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner of CGST, Division - [●], Coimbatore CGST Commissionerate, Tamil Nadu

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 74A of the Central Goods and Services Tax Act, 2017 read with Section 74A of the Tamil Nadu Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX,
YYYY Industrial Estate, Coimbatore, Tamil Nadu.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX, a proprietary concern of Mr. Z (GSTIN 33XXXXX0000X1Z0), manufactures PVC-coated polyester fabric ('XXX Tarp-Cloth') at Coimbatore and supplies it to customers in Tamil Nadu. The Noticee reported the product under HSN 5903 at 12% till March 2025 (RUD-2), and, from April 2025, under HSN 5407 at 5%, and claimed refund of accumulated input tax credit on the ground of inverted duty structure under proviso (ii) to Section 54(3) of the CGST Act, 2017 for the tax periods April 2025 to August 2025, which was sanctioned in FORM GST RFD-06 on five dates as per Annexure-B, totalling Rs.8,49,770/- (RUD-1);

2. AND WHEREAS an inspection under Section 71 of the Act was conducted at the factory on 10.03.2026, and a sample was drawn in the presence of Mr. Z (RUD-3). The test report of the NABL-accredited laboratory dated 02.04.2026 states that the sample is woven polyester base fabric coated on both sides with plasticised PVC, the coating mass being 410 g/sq.m of the total 650 g/sq.m, and visible to the naked eye (RUD-4);

3. AND WHEREAS the product catalogue, the website page and the purchase orders and e-way bills of three customers describe the product as 'PVC coated fabric - HSN 5903 - GST 12%' (RUD-5 and RUD-6), and the sales invoices and FORM GSTR-1 for April 2025 to August 2025 describe the same product as HSN 5407 at 5% (RUD-7);

4. AND WHEREAS the following mail dated 28.03.2025 from Mr. P, the accountant of the Noticee, to Mr. Z was retrieved from the computer of the Noticee on 10.03.2026 (RUD-8): 'From April, we can show the cloth under 5407 at 5%. Our inputs are at 18% and the greige cloth at 5%, so credit will pile up and we can file refund every month. At 5903 the rate is 12% and there will be no refund because output tax is more than the credit. Customers will not object because the product is the same and they get credit anyway.' Mr. Z replied 'ok, do it' on 29.03.2025;

5. AND WHEREAS Mr. Z, in his statement dated 15.05.2026 under Section 70 (RUD-9), admitted, inter alia, that the product has been the same since 2019 and has always been sold as PVC coated fabric; that the HSN 5903 at 12% was used till March 2025; that he changed the HSN on the advice of the accountant without verifying the classification; that he replied 'ok, do it' to the e-mail; and that he has no technical, legal or advance ruling basis for classification under HSN 5407. Mr. P, in his statement dated 22.05.2026 (RUD-10), confirmed the e-mail and that the change was proposed solely to obtain the refund;

6. AND WHEREAS the product, being a textile fabric coated with plastics, in which the coating is visible to the naked eye, is classifiable under heading 5903 of the First Schedule to the Customs Tariff Act, 1975 [the text of heading 5903 and the relevant Section/Chapter Notes to be quoted here by the officer from the official tariff], which, by the interpretation Explanation to Notification No. 1/2017-Central Tax (Rate), governs the reading of the Rate Notification, and not under heading 5407, which covers woven

fabrics of synthetic filament yarn which are not so coated. The rate of tax on the product during April to August 2025 was accordingly 12% (6% CGST + 6% TNGST) (RUD-11);

7. AND WHEREAS the purchase invoices (RUD-12) and the returns (RUD-13) show that the Noticee's input tax credit during the five months was Rs.26,68,400/- (of which Rs.24,16,400/- on inputs), whereas the output tax at the correct rate of 12% was Rs.41,52,000/-. As the output tax was higher than the credit, no credit had accumulated by reason of the rate of tax on inputs being higher than the rate of tax on output supplies, and the maximum refund under Rule 89(5) is nil in each month (working in Annexure-A). The refund of Rs.8,49,770/- was therefore erroneously granted. Further, tax at 5% was paid (RUD-13), as against 12% payable; the tax short-paid on the taxable value of Rs.3,46,00,000/- is Rs.24,22,000/-;

8. AND WHEREAS it appears that the Noticee changed the declared HSN with no change in the product, as the e-mail shows, for the purpose of creating an artificial inverted duty structure and obtaining a refund every month, and the wrong declarations in the invoices, in FORM GSTR-1 and in FORM GST RFD-01 were made wilfully, for which the Noticee had no bona fide basis (statement of Mr. Z, RUD-9). The short payment of tax and the erroneous refund therefore appear to be by reason of wilful misstatement and suppression of facts to evade tax and to obtain refund, attracting penalty under Section 74A(5)(ii) and Section 122(1)(viii) of the CGST Act, 2017/TNGST Act, 2017;

9. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the TNGST Act, 2017):

- Section 9(1) read with Notification No. 1/2017-Central Tax (Rate) - short payment of tax by wrong classification;
- Proviso (ii) to Section 54(3) read with Rule 89(5) - claim and receipt of refund of ITC not admissible;
- Section 37(1) read with Rule 59, and Section 31 read with Rule 46 - wrong particulars (HSN, rate) in FORM GSTR-1 and invoices;

10. AND WHEREAS the aforesaid acts and omissions render the Noticee liable to:

(a) demand and recovery of the tax short-paid and of the refund erroneously granted under Section 74A of the CGST Act, 2017/TNGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017;

(c) penalty under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 (or, in the alternative, under Section 74A(5)(i)); and

(d) penalty under Section 122(1)(viii) of the CGST Act, 2017/TNGST Act, 2017 (without prejudice to, and subject to Section 75(13) in relation to, the penalty at (c) above);

NOW, THEREFORE

M/s XXX, a proprietary concern of Mr. Z, situated at YYYY Industrial Estate, Coimbatore, Tamil Nadu, and Mr. Z, Proprietor of M/s XXX, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of CGST, Coimbatore Division, Coimbatore CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the PVC-coated polyester fabric manufactured and supplied by them during April 2025 to August 2025 should not be held to be classifiable under HSN 5903 and taxable at 12% (6% CGST + 6% TNGST) under Notification No. 1/2017-Central Tax (Rate)/the corresponding TNGST notification, and not under HSN 5407 at 5%;

(ii) an amount of Rs.12,11,000/- (Central tax) and Rs.12,11,000/- (Tamil Nadu State tax), total Rs.24,22,000/- (Rupees Twenty-Four Lakh Twenty-Two Thousand only), being the tax short-paid on the taxable value of Rs.3,46,00,000/- as detailed in Annexure-A, should not be demanded and recovered from them under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017;

(iii) an amount of Rs.4,24,885/- (Central tax) and Rs.4,24,885/- (Tamil Nadu State tax), total Rs.8,49,770/- (Rupees Eight Lakh Forty-Nine Thousand Seven Hundred and Seventy only), being

the refund of accumulated input tax credit sanctioned in FORM GST RFD-06 on the five dates stated in Annexure-B and not admissible in view of proviso (ii) to Section 54(3) read with Rule 89(5), should not be demanded and recovered from them as erroneously refunded, under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the TNGST Act, 2017;

(iv) interest under Section 50(1) of the CGST Act, 2017/TNGST Act, 2017 should not be charged and recovered on the tax at (ii) from the due dates of FORM GSTR-3B of the respective months, and on the amount at (iii) from the dates of the refund orders, till the date of payment;

(v) a penalty of Rs.16,35,885/- (Central tax) and Rs.16,35,885/- (Tamil Nadu State tax), total Rs.32,71,770/-, being equal to the tax at (ii) and (iii) above, should not be imposed on them under Section 74A(5)(ii) of the CGST Act, 2017/TNGST Act, 2017 (without prejudice to the benefit available under Section 74A(9), and, in the alternative, if it is held that fraud, wilful misstatement or suppression is not established, under Section 74A(5)(i) with the benefit of Section 74A(8));

(vi) penalty should not separately be imposed on them under Section 122(1)(viii) of the CGST Act, 2017/TNGST Act, 2017 for fraudulently obtaining refund of tax, without prejudice to (v) above and subject to Section 75(13) and Section 126 of the CGST Act, 2017.

11. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/TNGST Act, 2017 (and, if the adjudicating authority finds no fraud, wilful misstatement or suppression, the benefit of Section 74A(8)), whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said notice are deemed to be concluded;
- the Noticee may rely on any technical opinion or classification evidence in support of the HSN 5407, which will be considered at the time of adjudication; and this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/TNGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GST RFD-01 applications and RFD-06 refund orders for April to August 2025 with the bank credit advice;

RUD-2: FORM GSTR-1 HSN summaries and sales registers for April 2023 to March 2025 (HSN 5903 at 12%);

RUD-3: Inspection report under Section 71 and sample-drawal mahazar dated 10.03.2026;

RUD-4: Test report of the NABL-accredited laboratory dated 02.04.2026;

RUD-5: Product catalogue and printout of the website page of the Noticee;

RUD-6: Purchase orders and e-way bills (40 sample) of three customers describing the goods under HSN 5903;

RUD-7: Sales invoices and FORM GSTR-1 for April to August 2025 (HSN 5407 at 5%);

RUD-8: E-mail dated 28.03.2025 from Mr. P to Mr. Z and the reply dated 29.03.2025, retrieved from the computer of the Noticee on 10.03.2026;

RUD-9: Statement of Mr. Z recorded on 15.05.2026 under Section 70;

RUD-10: Statement of Mr. P recorded on 22.05.2026 under Section 70;

RUD-11: Extract of heading 5903 and Chapter 59 Notes of the Customs Tariff and the relevant rate notification;

RUD-12: Purchase invoices of grey fabric, PVC compound and input services for April to August 2025;

RUD-13: FORM GSTR-3B and electronic credit ledger for April to September 2025;

Annexure-A: Month-wise computation of the refund under Rule 89(5), the tax short-paid and the interest [as per the tables in Part B];

Annexure-B: Particulars of the refund orders (dates and amounts, as per the table in the Situation).

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Coimbatore CGST Commissionerate

Copy to: The Additional/Joint Commissioner, Coimbatore CGST Commissionerate, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional office, F. No./DIN, dates, GSTIN and the product name shown in square brackets/blanks or as placeholders are illustrative and must be completed with the correct particulars before issue. The officer must reproduce the text of heading 5903 and the Chapter/Section Notes from the official Customs Tariff in para 6 (and RUD-11); they have not been quoted in this exercise.*
- ***Teaching point - the two-limbed demand.** A refund obtained on a wrong classification gives rise to two different dues: (1) the refund itself (erroneously refunded, Section 74A(1)) and (2) the output tax short-paid because the lower rate was applied. A notice which demands only the refund leaves the short-paid tax undemanded. Compare Exercise-18 (classification dispute with no refund - only the short-paid tax) and Exercise-36 (inverted duty where the classification is not in question but the Net ITC is overstated).*
- ***Fraud or bona fide classification dispute?** The Noticee will plead a reasonable belief that the product falls under heading 5407. That defence is tested on conduct: change of HSN with no change in the product; the Noticee's own catalogue, e-way bills and customer orders under 5903; the e-mail showing the purpose; and the absence of any technical basis. Without such evidence (for example, where the HSN had been 5407 from the start and the dispute was about the coating), the notice should be limited to Section 74A(5)(i). No case law is cited in this exercise; the principle is drawn from the text of Section 74A(5).*
- ***Rate and period.** The period is April to August 2025, i.e. before the rate changes of 22.09.2025, so that the 5%/12% rates apply and the post-22.09.2025 notification is not needed. The classification must be established with reference to the rate in force on the date of supply, not on the date of refund (the refund for August 2025 was filed after 22.09.2025). The tax rates quoted must be checked by the officer against Notification No. 1/2017-Central Tax (Rate) (Schedule I for 5407; Schedule II for 5903) as in force during the period.*
- ***Authority.** The central tax involved is Rs.16,35,885/-, and the tax with TNGST is Rs.32,71,770/-. In terms of the monetary limits of Circular No. 31/05/2018-GST dated 09.02.2018, a central tax demand above Rs.10 lakh and up to Rs.1 crore is within the powers of the Deputy/Assistant Commissioner, who therefore issues and adjudicates this notice (a Superintendent can issue it only up to Rs.10 lakh of central tax).*
- ***Interest and re-credit.** The authority to charge interest from the date of the refund and the mechanics of re-crediting the credit ledger on recovery of a refund of credit are not spelt out in the Act in terms; they have been treated in the notice and in Part B conservatively (full demand, adjustment at adjudication). They should be verified against the latest instructions of the Board before issue.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 81

Opting for the composition levy by a manufacturer of ice cream (notified goods) - Section 10(2)(e), Section 10(5), Rule 6 and Section 74A

Exercise 81: Opting for the composition levy by a manufacturer of ice cream (notified goods) - Section 10(2)(e), Section 10(5), Rule 6 and Section 74A

Situation in Brief:

1. M/s XXX Ice Creams, a proprietary concern of Mr. Z, with its plant at YYYY, Agra, Uttar Pradesh (GSTIN 09XXXXX0000X1Z0), manufactures ice cream (cups, cones and family packs) and ice candies, which are sold to retailers and distributors within Uttar Pradesh, and also directly from its factory counter. The Noticee was registered in 2022 as a regular taxpayer and, in FY 2022-23 and FY 2023-24, paid tax at 18% (9% CGST + 9% UPGST) on its supplies of ice cream under heading 2105 (turnover of FY 2023-24: Rs.98,00,000/-).

2. In March 2024, Mr. Z filed FORM GST CMP-02 on 22.03.2024 opting to pay tax under Section 10 of the CGST Act, 2017 (composition levy) for FY 2024-25, with effect from 01.04.2024. During FY 2024-25 the Noticee issued 'bills of supply' with the legend 'composition taxable person, not eligible to collect tax on supplies', describing the goods as 'milk dessert' without any HSN, filed FORM GST CMP-08 quarterly and paid composition tax at 1% (0.5% CGST + 0.5% UPGST) of the turnover of Rs.1,10,00,000/-, i.e. Rs.1,10,000/-, on the dates stated below. The annual return in FORM GSTR-4 for FY 2024-25 was filed on 28.04.2025, with the business description 'manufacture of milk-based products'. The month-wise turnover and the composition tax paid were as follows:

Quarter	Turnover (Rs.)	Composition tax @1% paid (Rs.)	Paid on
April-June 2024	43,00,000	43,000	18.07.2024
July-September 2024	25,00,000	25,000	18.10.2024
October-December 2024	16,00,000	16,000	18.01.2025
January-March 2025	26,00,000	26,000	18.04.2025
TOTAL	**1,10,00,000**	**1,10,000**	

3. On receipt of information from the licensing authority of the Food Safety and Standards Authority of India (FSSAI) in July 2025 that the Noticee held a licence for the manufacture of 'frozen desserts / ice cream', the Superintendent verified the position. The letter dated 05.08.2025 of the Designated Officer, Food Safety, Agra, enclosed the licence (valid till 2027) in the name of the Noticee for 'ice cream and frozen desserts - manufacturer', the product list in the licence application (nine flavours of ice cream, two ice candies) and the lab reports of the ice cream samples drawn by the Food Safety Officer on 14.02.2025. The website and the social-media page of the Noticee advertise 'XXX Ice Creams - Since 2019'. The purchase register for FY 2024-25 shows skimmed milk powder, cream, sugar, stabilisers, flavours, cones and cups, and no other manufacturing activity; the electricity bills show the cold-storage load.

4. A summons dated 18.08.2025 was issued to Mr. Z under Section 70 of the CGST Act, 2017. He appeared on 28.08.2025 and produced the sales ledger, the bill books and the purchase invoices. His statement was recorded on the same day under Section 70, wherein he stated, inter alia, that: (a) the entire turnover of FY 2024-25 is from the sale of ice cream and ice candies manufactured at the factory; (b) he knew that composition was not allowed for ice cream makers, because his earlier accountant had told him so in 2023; but in March 2024 Mr. P, a chartered accountant whom he consulted afresh, told him on telephone that 'the portal does not check the product and the department does not link FSSAI to GST', and he then opted for composition on the strength of that; (c) he had asked his own accountant to describe the goods as 'milk dessert' in the bills and the return, so as to avoid any question; (d) he had not collected any tax from customers; and (e) the saving on tax was about Rs.18,70,000/-, which he had spent on the new compressor. A WhatsApp message of 21.03.2024 from Mr. P to Mr. Z, 'ice cream is excluded, but nobody will check, go for 1%', was produced by him on the same day.

5. FORM GST CMP-05 (show cause why the option should not be denied) was issued on 12.09.2025 under Rule 6(4). The Noticee replied in FORM GST CMP-06 on 24.09.2025, contending that his product is

'frozen milk dessert', not 'ice cream'. The proper officer rejected the reply and denied the option, by an order in FORM GST CMP-07 dated 14.10.2025 with effect from 01.04.2024, i.e. the date of the option. The Noticee has not appealed against the order and has not paid any tax so far.

6. The month-wise turnover as per the sales ledger and the tax payable on the supplies at the regular rate of 18% (9% + 9%) are given below. The tax paid at 1% is shown against the month of supply. No tax was collected from the customers and no input tax credit has been claimed in any return. The Noticee has filed an ITC-03 on 18.05.2024 reversing Rs.41,200/- on the stock of inputs on 31.03.2024 under Section 18(4):

Month	Turnover (Rs.)	Tax @18% (Rs.)	Composition tax paid @1% (Rs.)	Balance payable (Rs.)
April 2024	12,00,000	2,16,000	12,000	2,04,000
May 2024	16,00,000	2,88,000	16,000	2,72,000
June 2024	15,00,000	2,70,000	15,000	2,55,000
July 2024	10,00,000	1,80,000	10,000	1,70,000
August 2024	8,00,000	1,44,000	8,000	1,36,000
September 2024	7,00,000	1,26,000	7,000	1,19,000
October 2024	6,00,000	1,08,000	6,000	1,02,000
November 2024	5,00,000	90,000	5,000	85,000
December 2024	5,00,000	90,000	5,000	85,000
January 2025	5,00,000	90,000	5,000	85,000
February 2025	8,00,000	1,44,000	8,000	1,36,000
March 2025	13,00,000	2,34,000	13,000	2,21,000
TOTAL	**1,10,00,000**	**19,80,000**	**1,10,000**	**18,70,000**

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

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SUGGESTED SOLUTION

(Inquiry on FSSAI information and summons, Denial of the option under Rule 6, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Ice Creams, Prop. Mr. Z, Agra CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 [UPGST Act] and the Rules made under the two Acts):

1. **Section 10(2)(e) of the CGST Act, 2017 read with Notification No. 14/2019-Central Tax dated 07.03.2019** - the Noticee is a manufacturer of ice cream and other edible ice (heading 2105 00 00), which is a notified class of goods, and was therefore not eligible to opt to pay tax under Section 10(1) for FY 2024-25. (The Notification lays down, as goods whose manufacturers are not eligible: ice cream and other edible ice, pan masala, and tobacco and manufactured tobacco substitutes.)
2. **Section 10(1) read with Rule 6(1) of the CGST Rules, 2017** - the option exercised in FORM GST CMP-02 was invalid, as the option remains valid only so long as the person satisfies all the conditions of Section 10 [Rule 6(1)]; the Noticee never satisfied the condition of Section 10(2)(e).
3. **Section 9(1) of the CGST Act, 2017** - non-payment of tax at the regular rate of 18% on the entire outward supplies of ice cream for FY 2024-25; the Noticee paid only the composition tax of 1%.
4. **Section 31(1) read with Rule 46** (tax invoice) - bills of supply were issued instead of tax invoices; and **Sections 37 and 39** - the monthly statements of outward supplies and returns in FORM GSTR-1 and FORM GSTR-3B were not filed (CMP-08 and GSTR-4 were filed instead).

Note: *The Master Chart (Template VII-A, Sl. 5, p.34) refers to 'a manufacturer of ice cream, pan masala, tobacco and manufactured tobacco substitutes, and aerated water'. Notification No. 14/2019-Central Tax, as read for this exercise, names only ice cream and other edible ice, pan masala, and tobacco and manufactured tobacco substitutes; aerated water is not named there. The Chart's reference to Section 122(1A) is also not applicable here, because Section 122(1A) applies only to a person who retains the benefit of a transaction covered by clauses (i), (ii), (vii) or (ix) of Section 122(1). Section 10(5) itself prescribes the penalty.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX to the following action under the CGST Act, 2017 (read with the corresponding provisions of the UPGST Act, 2017):

1. Withdrawal of the option (Rule 6) - the proper officer may deny the option by FORM GST CMP-05 (notice, 15 days), CMP-06 (reply) and CMP-07 (order within 30 days of the reply) [Rule 6(4) and (5)]; the denial may take effect from the date the option was exercised or from the date of the contravening event. Here the contravening condition (nature of goods manufactured) existed on the day of the option, so the order of 14.10.2025 rightly operates from 01.04.2024. The CMP-07 order does not itself raise any tax demand: the tax is determined only under Section 74A, as the next paragraph shows. (Where the Noticee had himself noticed the position, he was to file CMP-04 within seven days [Rule 6(2)] and pay tax under Section 9 from that day.)
2. Determination of tax - Section 10(5) read with Section 74A - Section 10(5) provides that where the proper officer has reasons to believe that a taxable person has paid tax under Section 10(1) (or 10(2A)) despite not being eligible, he shall, in addition to any tax payable under any other provisions of the Act, be liable to a penalty, and Sections 73, 74 or 74A apply for the determination of the tax and the penalty. The supplies pertain to FY 2024-25, for which Section 74A is the demand provision. The annual return for FY 2024-25 was due on 31.12.2025, so the notice may be issued up to 30.06.2029 [Section 74A(2)]; the order must be passed within twelve months of the notice (extendable by six months) [Section 74A(7)]. The tax due is the tax at the regular rate of 18% on the entire supplies of Rs.1,10,00,000/-, i.e. Rs.19,80,000/-, less the composition tax of Rs.1,10,000/- paid by the Noticee, which is given credit as tax already paid in respect of the same supplies; the balance, Rs.18,70,000/- (Rs.9,35,000/- each under

CGST and UPGST), is demanded.

3. Rate of tax - ice cream and other edible ice, heading 2105 00 00, was taxable at 18% (9% + 9%) in FY 2024-25 under Notification No. 1/2017-Central Tax (Rate), as amended; the rate was changed with effect from 22.09.2025 and is not relevant to this period. The rate for the period must be verified from the notification as in force on the dates of supply. No supplies of FY 2025-26 are included in this notice; if the Noticee has continued under composition in FY 2025-26, a separate computation at the rate applicable to each supply date (before and after 22.09.2025) is needed.

4. Input tax credit - a person paying tax under Section 10 is not entitled to input tax credit [Section 10(4)], and the Noticee has taken none; the notice therefore allows none. The credit of Rs.41,200/- reversed by the Noticee in FORM GST ITC-03 under Section 18(4) on opting for the scheme, and the credit on the stock held on the date of withdrawal, are matters that arise under Section 18(1)(c) and Rule 6(6) (FORM GST ITC-01 within thirty days of the CMP-07 order); they do not reduce the demand in the notice and are for the Noticee to claim, subject to the conditions, and for the proper officer to verify. The credit for the inputs purchased during FY 2024-25 is not available while the Noticee remains outside the regular scheme, and it is for him to show, at adjudication, any entitlement.

5. Interest - Section 50(1) at 18% on the balance tax from the day after the due date of FORM GSTR-3B for each month (20th of the following month) till payment; up to 30.11.2026 it is Rs.7,18,370/- (Rs.3,59,185/- each under CGST and UPGST).

6. Penalty - fraud or non-fraud? Section 10(5) makes the ineligible person liable to a penalty and, through Section 74A, the amount depends on the nature of the default. A bona fide mistake about eligibility (for example, a person who made a variety of dairy products and did not know that ice cream was excluded) would attract Section 74A(5)(i) (10% of the tax or Rs.10,000, whichever is higher). The facts here show wilful misstatement and suppression: (a) the Noticee paid 18% on the same product till March 2024; (b) his own admission that he knew ice cream manufacturers were excluded; (c) the WhatsApp message of 21.03.2024 ('ice cream is excluded, but nobody will check'); (d) the description 'milk dessert' in the bills and 'manufacture of milk-based products' in GSTR-4, chosen to avoid scrutiny; and (e) the FSSAI licence and the website, which show that the Noticee holds himself out as an ice cream manufacturer. The reply that 'frozen milk dessert' is not ice cream is contradicted by the licence, the lab reports and his own statement. A penalty equal to the tax, Rs.18,70,000/- (Rs.9,35,000/- each under CGST and UPGST), is proposed under **Section 74A(5)(ii)** read with Section 10(5). The concessions of **Section 74A(9)** (15% / 25% / 50%, as used in Exercises 49 and 52) are mentioned in the notice.

7. Other penalties - no separate penalty under Section 122(1) is proposed: the matter is covered by the specific provision of Section 10(5) read with Section 74A(5), and the consequential defaults (invoices, returns) are not independently penalised in view of Section 75(13) and Section 126. Section 122(1A) is not applicable (see Note above). Mr. P, who advised on the telephone and in the WhatsApp message, can be proceeded against as an abettor under Section 122(3) only if his role is established as in Exercise-40; no such proceeding is part of this notice.

8. Collection of tax from customers - the Noticee did not collect any tax from his customers (bills of supply). Section 76 is therefore not attracted, and the tax at 18% is demanded from the Noticee on the value received without being added to it, since no tax was charged or collected (the cum-tax claim, if any, will be examined at adjudication).

9. Recovery, attachment and prosecution - recovery under Sections 78 and 79. Provisional attachment is not proposed. Prosecution under Section 132 has been considered (tax evaded Rs.18,70,000/- is below the Rs.1 crore threshold); not proposed.

Illustrative working of the tax, interest and penalty (up to 30.11.2026):

Month	Balance tax payable (Rs.)	Due date of GSTR-3B	Days to 30.11.2026	Interest @18% (Rs.)
April 2024	2,04,000	20.05.2024	924	92,956
May 2024	2,72,000	20.06.2024	893	1,19,784
June 2024	2,55,000	20.07.2024	863	1,08,526

Month	Balance tax payable (Rs.)	Due date of GSTR-3B	Days to 30.11.2026	Interest @18% (Rs.)
July 2024	1,70,000	20.08.2024	832	69,752
August 2024	1,36,000	20.09.2024	801	53,722
September 2024	1,19,000	20.10.2024	771	45,246
October 2024	1,02,000	20.11.2024	740	37,224
November 2024	85,000	20.12.2024	710	29,762
December 2024	85,000	20.01.2025	679	28,462
January 2025	85,000	20.02.2025	648	27,162
February 2025	1,36,000	20.03.2025	620	41,582
March 2025	2,21,000	20.04.2025	589	64,192
TOTAL	**18,70,000**			**7,18,370**

Particulars	Central tax (Rs.)	UP State tax (Rs.)	Total (Rs.)
Tax at 18% on Rs.1,10,00,000	9,90,000	9,90,000	19,80,000
Less: composition tax paid (1%)	55,000	55,000	1,10,000
Balance tax demanded	9,35,000	9,35,000	18,70,000
Interest up to 30.11.2026	3,59,185	3,59,185	7,18,370
Penalty 74A(5)(ii)	9,35,000	9,35,000	18,70,000
TOTAL	**22,29,185**	**22,29,185**	**44,58,370**

Basis: *(1) The tax at the regular rate is worked on the value of the supplies as recorded (the Noticee charged no tax); the credit of the composition tax is given month-wise against the tax of the month in which the supply was made, although it was paid quarterly; interest is worked only on the balance. There is no express provision in the Act for adjusting composition tax against the tax found due, and the adjustment has been made on the principle that the same supplies are not taxed twice; the adjudicating authority will confirm. (2) The balance is 17% of the turnover in each month.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Ice Creams, a proprietary concern of Mr. Z, situated at YYYY, Agra, Uttar Pradesh, and Mr. Z, Proprietor of M/s XXX Ice Creams, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX Ice Creams and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Agra CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) they should not be held to have been ineligible to opt to pay tax under Section 10(1) of the CGST Act, 2017/UPGST Act, 2017 for FY 2024-25, being manufacturers of ice cream and other edible ice, a class of goods notified under Section 10(2)(e) by Notification No. 14/2019-Central Tax dated 07.03.2019, the option having been denied by the order in FORM GST CMP-07 dated 14.10.2025 with effect from 01.04.2024, and the tax on their supplies of ice cream and ice candies of Rs.1,10,00,000/- should not be held to be payable at the regular rate of 18% under Section 9(1) of the Act;

(ii) an amount of Rs.9,35,000/- (Central tax) and Rs.9,35,000/- (Uttar Pradesh State tax), total Rs.18,70,000/- (Rupees Eighteen Lakh Seventy Thousand only), being the balance of the tax at

18% (Rs.19,80,000/-) after giving credit for the composition tax paid (Rs.1,10,000/-), as detailed in Annexure-A, should not be demanded and recovered from them under Section 10(5) read with Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the UPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/UPGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the due date of FORM GSTR-3B for each month till the date of payment;

(iv) a penalty of Rs.9,35,000/- (Central tax) and Rs.9,35,000/- (Uttar Pradesh State tax), total Rs.18,70,000/-, being equal to the tax due, should not be imposed on them under Section 10(5) read with Section 74A(5)(ii) of the CGST Act, 2017/UPGST Act, 2017 (without prejudice to the benefit available under Section 74A(9) and, in the alternative, if fraud, wilful misstatement or suppression is not established, under Section 74A(5)(i) with the benefit of Section 74A(8)).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-AGRA

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Agra CGST Commissionerate, Uttar Pradesh

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 10(5) read with Section 74A of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX Ice Creams,
YYYY, Agra, Uttar Pradesh.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX Ice Creams and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX Ice Creams, a proprietary concern of Mr. Z (GSTIN 09XXXXX0000X1Z0), manufactures ice cream and ice candies at Agra and was a regular taxpayer, paying tax at 18% on ice cream, till FY 2023-24 (RUD-1). The Noticee filed FORM GST CMP-02 on 22.03.2024 opting to pay tax under Section 10 for FY 2024-25 and, during FY 2024-25, paid composition tax at 1%, i.e. Rs.1,10,000/-, on the turnover of Rs.1,10,00,000/- by FORM GST CMP-08 (RUD-2);

2. AND WHEREAS the licensing authority of the FSSAI at Agra informed, by letter dated 05.08.2025, that the Noticee holds a licence for the manufacture of ice cream and frozen desserts, enclosing the licence, the product list and the lab reports of the samples of ice cream drawn on 14.02.2025 (RUD-3); the website and social-media page of the Noticee advertise 'XXX Ice Creams' (RUD-4); and the purchase register of FY 2024-25 shows purchases of milk powder, cream, sugar, stabilisers, flavours, cones and cups only (RUD-5);

3. AND WHEREAS Mr. Z, in his statement dated 28.08.2025 under Section 70 (RUD-6), admitted that the whole turnover of FY 2024-25 is from the sale of ice cream and ice candies; that he knew that composition was not available to ice cream makers; that he opted on the telephone advice of Mr. P that the portal does not check the product; that he had the goods described as 'milk dessert' in the bills and the return to avoid any question; and that he did not collect any tax from customers. He produced the WhatsApp message of 21.03.2024 from Mr. P: 'ice cream is excluded, but nobody will check, go for 1%' (RUD-7);

4. AND WHEREAS the bills of supply (RUD-8) describe the goods as 'milk dessert' with no HSN, and FORM GSTR-4 for FY 2024-25 filed on 28.04.2025 (RUD-2) describes the business as 'manufacture of milk-based products', whereas the sales ledger (RUD-9) shows that the entire turnover is of ice cream and ice candies falling under heading 2105 00 00;

5. AND WHEREAS in terms of Section 10(2)(e) of the Act read with Notification No. 14/2019-Central Tax dated 07.03.2019, a manufacturer of ice cream and other edible ice is not eligible to opt to pay tax under Section 10(1); the Noticee was therefore not eligible on the day of the option. A notice in FORM GST CMP-05 was issued on 12.09.2025 under Rule 6(4), the Noticee replied on 24.09.2025 in FORM GST CMP-06 (RUD-10), and the proper officer denied the option by order in FORM GST CMP-07 dated 14.10.2025 with effect from 01.04.2024 (RUD-11);

6. AND WHEREAS in terms of Section 10(5), a person who has paid tax under Section 10 despite not being eligible is liable to a penalty, in addition to the tax payable under the other provisions of the Act, and Section 74A applies for the determination of tax and penalty. The tax at the regular rate of 18% on the supplies of Rs.1,10,00,000/- is Rs.19,80,000/-; after giving credit for the composition tax of Rs.1,10,000/- paid, the balance, Rs.18,70,000/- (Rs.9,35,000/- each under CGST and UPGST), has not

been paid (Annexure-A). No input tax credit has been taken by the Noticee and none is allowed, in view of Section 10(4);

7. AND WHEREAS the non-payment of the tax appears to be by reason of wilful misstatement and suppression of facts to evade tax: the Noticee knew that ice cream makers are excluded, took advice that the department would not check, described the goods as 'milk dessert' and the business as 'milk-based products', and retained the saving of tax; the product is established as ice cream by the licence, the lab reports, the website, the purchase register and the statement of the Noticee. Penalty equal to the tax is accordingly attracted under Section 10(5) read with Section 74A(5)(ii);

8. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the UPGST Act, 2017):

- Section 10(2)(e) read with Notification No. 14/2019-Central Tax and Section 10(1) - opting for composition levy while ineligible;
- Section 9(1) - non-payment of tax at the regular rate;
- Section 31(1) read with Rule 46, and Sections 37 and 39 - tax invoices not issued and returns not furnished for the regular scheme;

9. AND WHEREAS the aforesaid acts and omissions render the Noticee liable to:

(a) demand and recovery of tax under Section 10(5) read with Section 74A of the CGST Act, 2017/UPGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/UPGST Act, 2017; and

(c) penalty under Section 10(5) read with Section 74A(5)(ii) (or, in the alternative, Section 74A(5)(i)) of the CGST Act, 2017/UPGST Act, 2017;

NOW, THEREFORE

M/s XXX Ice Creams, a proprietary concern of Mr. Z, situated at YYYY, Agra, Uttar Pradesh, and Mr. Z, Proprietor of M/s XXX Ice Creams, are hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Agra CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) they should not be held to have been ineligible to opt to pay tax under Section 10(1) of the CGST Act, 2017/UPGST Act, 2017 for FY 2024-25, being manufacturers of ice cream and other edible ice, a class of goods notified under Section 10(2)(e) by Notification No. 14/2019-Central Tax dated 07.03.2019, the option having been denied by the order in FORM GST CMP-07 dated 14.10.2025 with effect from 01.04.2024, and the tax on their supplies of ice cream and ice candies of Rs.1,10,00,000/- should not be held to be payable at the regular rate of 18% under Section 9(1) of the Act;

(ii) an amount of Rs.9,35,000/- (Central tax) and Rs.9,35,000/- (Uttar Pradesh State tax), total Rs.18,70,000/- (Rupees Eighteen Lakh Seventy Thousand only), being the balance of the tax at 18% (Rs.19,80,000/-) after giving credit for the composition tax paid (Rs.1,10,000/-), as detailed in Annexure-A, should not be demanded and recovered from them under Section 10(5) read with Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the UPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/UPGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the due date of FORM GSTR-3B for each month till the date of payment;

(iv) a penalty of Rs.9,35,000/- (Central tax) and Rs.9,35,000/- (Uttar Pradesh State tax), total Rs.18,70,000/-, being equal to the tax due, should not be imposed on them under Section 10(5) read with Section 74A(5)(ii) of the CGST Act, 2017/UPGST Act, 2017 (without prejudice to the benefit available under Section 74A(9) and, in the alternative, if fraud, wilful misstatement or suppression is not established, under Section 74A(5)(i) with the benefit of Section 74A(8)).

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty

(30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;

- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;
- attention is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/UPGST Act, 2017 (and, if the adjudicating authority finds no fraud, wilful misstatement or suppression, Section 74A(8)), whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of the said notice are deemed to be concluded;
- the Noticee's right to claim credit under Section 18(1)(c) and Rule 6(6) in respect of the stock held, and any other claim of adjustment, may be raised in the reply and will be considered; this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/UPGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Registration certificate, FORM GSTR-1 and FORM GSTR-3B for FY 2022-23 and FY 2023-24 showing tax at 18% on ice cream;

RUD-2: FORM GST CMP-02 dated 22.03.2024, FORM GST CMP-08 for the four quarters of FY 2024-25 with challans, and FORM GSTR-4 for FY 2024-25 filed on 28.04.2025;

RUD-3: Letter dated 05.08.2025 of the Designated Officer, Food Safety, Agra, with the FSSAI licence, the product list and the lab reports dated 14.02.2025;

RUD-4: Printouts of the website and the social-media page of the Noticee;

RUD-5: Purchase register and sample purchase invoices for FY 2024-25;

RUD-6: Statement of Mr. Z recorded on 28.08.2025 under Section 70;

RUD-7: WhatsApp message dated 21.03.2024 from Mr. P to Mr. Z, produced on 28.08.2025;

RUD-8: Bills of supply for FY 2024-25 (bill books);

RUD-9: Sales ledger and month-wise turnover for FY 2024-25;

RUD-10: FORM GST CMP-05 dated 12.09.2025 and the reply in FORM GST CMP-06 dated 24.09.2025;

RUD-11: Order in FORM GST CMP-07 dated 14.10.2025;

Annexure-A: Month-wise computation of tax at 18%, composition tax adjusted, balance tax and interest [as per the tables in Part B and in the Situation].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Agra CGST Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Agra, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN, GSTIN and dates shown in square brackets/blanks or as placeholders are illustrative and must be completed with the correct particulars before issue. The dates of the FSSAI letter, summons, CMP-05/06/07 are part of the illustration.*
- ***Teaching point - ineligibility by the nature of the goods, effective from the date of the option.*** *Ineligibility is not a matter of degree: the manufacturer of notified goods can never validly opt, so the option fails from 01.04.2024 [Rule 6(5)], the whole year's supplies are taxed at the regular rate, and the composition tax paid is only adjusted. The levy of composition tax and the rate (1%) are irrelevant to the result. Compare Exercise-28 (a valid composition dealer who collects tax from customers - Section 10(4)) and Exercise-29 (a person who is eligible when opting but ceases to be eligible by crossing the turnover limit or by inter-State supplies - the option lapses from that date only).*

- ***Fraud or non-fraud?*** *The notice treats the matter as one of wilful misstatement (Section 74A(5)(ii)) because the Noticee knew of the exclusion, took advice that the department would not check, and disguised the goods as 'milk dessert'. If the same person had sincerely believed that his product was not 'ice cream and other edible ice' (for example, a plant-based frozen dessert whose classification is genuinely arguable), the penalty would be Section 74A(5)(i) and the benefit of Section 74A(8) would apply. The charge must be supported by the evidence discussed in the body of the notice.*
- ***Route.*** *Two parallel steps are needed: the Rule 6(4)-(5) denial (CMP-05/06/07), which settles the date from which the option is denied, and the demand under Section 10(5) read with Section 74A. The CMP-07 order does not itself compute tax. The order in this exercise is assumed to have been passed before the notice; the demand can also be made without waiting for it. Since the Chart's Template VII-A merely refers to the regular rate with an equal penalty, the officer should note that the penalty is under Section 10(5) and is quantified by Section 74A(5), where the nature of the default decides the amount.*
- ***Authority.*** *The central tax demand is Rs.9,35,000/-, within the monetary limit of Rs.10 lakh of the Superintendent under Circular No. 31/05/2018-GST dated 09.02.2018. Where the Noticee's tax exceeds Rs.10 lakh of central tax, the Deputy/Assistant Commissioner would issue the notice.*
- ***ITC.*** *The notice allows no credit. Section 10(4) bars credit during the period of composition; the stock-based credit in Section 18(1)(c) and Rule 6(6) is a separate claim. Whether the Noticee can claim credit of purchases of FY 2024-25 after the denial has taken effect from the date of the option is not settled in this exercise; the officer should verify the latest instructions before the notice is issued.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 82

Opting for the composition levy by one registration when another registration under the same PAN pays tax under Section 9 - Proviso to Section 10(2), Section 10(5), Rule 6 and Section 74A

Exercise 82: Opting for the composition levy by one registration when another registration under the same PAN pays tax under Section 9 - Proviso to Section 10(2), Section 10(5), Rule 6 and Section 74A

Situation in Brief:

1. Mr. Z of Bhopal, Madhya Pradesh holds a single Permanent Account Number (PAN) (AAAAA0000A) and carries on two businesses, each with a separate registration under the CGST Act, 2017: (1) **GSTIN 23AAAAA0000A1Z1 - M/s XXX Home Store**, a retail shop at YYYY Road, Bhopal, trading in plastic household and kitchenware (HSN 3924); and (2) **GSTIN 23AAAAA0000A2Z0 - M/s XXX Plastics**, a manufacturing unit at Govindpura Industrial Area, Bhopal, which makes moulded plastic household articles and pays tax under Section 9 at the regular rate of 18% (9% CGST + 9% MPGST), filing FORM GSTR-1 and FORM GSTR-3B every month. The two registrations are of the same person; there is no partnership or company.

2. The aggregate turnover of FY 2023-24 under the PAN was Rs.1,35,00,000/- (retail Rs.62,00,000/- and manufacturing Rs.73,00,000/-). On 25.03.2024, Mr. Z filed FORM GST CMP-02 in respect of **GSTIN-1 (Home Store) only**, opting to pay tax under Section 10 for FY 2024-25 from 01.04.2024. M/s XXX Plastics (GSTIN-2) did not file any intimation and continued to pay tax under Section 9 throughout FY 2024-25 (turnover Rs.95,00,000/-). The Home Store issued bills of supply, filed FORM GST CMP-08 quarterly and FORM GSTR-4 for FY 2024-25 on 27.04.2025, and paid composition tax at 1% (0.5% CGST + 0.5% MPGST) on its turnover of Rs.1,30,00,000/- as under:

Quarter	Turnover of GSTIN-1 (Rs.)	Composition tax @1% (Rs.)	Paid on
April-June 2024	26,00,000	26,000	18.07.2024
July-September 2024	29,00,000	29,000	18.10.2024
October-December 2024	44,00,000	44,000	18.01.2025
January-March 2025	31,00,000	31,000	18.04.2025
TOTAL	**1,30,00,000**	**1,30,000**	

3. In August 2025, the data-analytics cell of the Commissionerate identified the case in a PAN-level scan of the composition taxpayers. A search of the GST portal on the basis of the PAN, taken on 12.08.2025 (master data of both GSTINs), showed that the two registrations stand in the name of Mr. Z as proprietor, with the same e-mail address and mobile number, and that GSTIN-1 is in the composition scheme and GSTIN-2 is a regular taxpayer. The returns of both GSTINs (CMP-08, GSTR-4; GSTR-1, GSTR-3B) for FY 2024-25 were downloaded; they show that the annual turnover of the PAN in FY 2024-25 was Rs.2,25,00,000/- (Rs.1,30,00,000/- + Rs.95,00,000/-).

4. A summons dated 25.08.2025 was issued to Mr. Z under Section 70, to which he appeared on 03.09.2025 with the books of both units, the common bank statement, the salary register and the income-tax return. The books show that: (a) the two units have a common current account in the name of Mr. Z, from which the purchases and expenses of both units are paid; (b) one accountant (Mr. P) and one accounts staff maintain the books of both units; (c) the income-tax return of Mr. Z for the AY 2025-26 shows the business income of both units in a single return; and (d) the retail unit purchased from third-party suppliers only (purchases of Rs.98,00,000/- with GST of Rs.17,64,000/- appearing in its FORM GSTR-2B); no goods were purchased from the manufacturing unit.

5. The statement of Mr. Z was recorded on 03.09.2025 under Section 70, wherein he stated, inter alia, that: (a) he treats the two units as two different businesses, because they have two GSTINs, and opted for the composition scheme for the retail unit alone on the advice of his chartered accountant, Mr. P, because the retail turnover was below Rs.1.5 crore; (b) he did not know that all registrations under one PAN should opt together, and was not told so by the portal; (c) he has not collected any tax from the customers of the Home Store, who paid the price in the bills of supply; (d) he has disclosed both units in his income-tax return, and all returns were filed on time; and (e) he does not wish to opt for the scheme for the manufacturing unit, as it needs input tax credit. Mr. P, in his statement dated 08.09.2025,

confirmed that he had advised opting for the retail unit alone, treating each GSTIN as a separate person, and had not noticed the condition of the same PAN.

6. A notice in FORM GST CMP-05 was issued on 15.09.2025 under Rule 6(4) of the CGST Rules, 2017. The Noticee replied on 25.09.2025 in FORM GST CMP-06, contending that the two GSTINs are separate registrations and that he had no intention to evade tax. By an order in FORM GST CMP-07 dated 20.10.2025, the proper officer denied the option of GSTIN-1 with effect from 01.04.2024. The Noticee has not appealed, and has not paid any tax on the basis of the order. The month-wise retail turnover and the tax computed at the regular rate of 18% are as follows (no tax was collected from the customers; no ITC has been claimed in the composition period):

Month	Turnover of GSTIN-1 (Rs.)	Tax @18% (Rs.)	Composition tax paid (Rs.)	Balance payable (Rs.)
April 2024	9,00,000	1,62,000	9,000	1,53,000
May 2024	9,00,000	1,62,000	9,000	1,53,000
June 2024	8,00,000	1,44,000	8,000	1,36,000
July 2024	8,00,000	1,44,000	8,000	1,36,000
August 2024	9,00,000	1,62,000	9,000	1,53,000
September 2024	12,00,000	2,16,000	12,000	2,04,000
October 2024	18,00,000	3,24,000	18,000	3,06,000
November 2024	16,00,000	2,88,000	16,000	2,72,000
December 2024	10,00,000	1,80,000	10,000	1,70,000
January 2025	8,00,000	1,44,000	8,000	1,36,000
February 2025	7,00,000	1,26,000	7,000	1,19,000
March 2025	16,00,000	2,88,000	16,000	2,72,000
TOTAL	**1,30,00,000**	**23,40,000**	**1,30,000**	**22,10,000**

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, calling upon M/s XXX and Mr. Z to show cause as to why action should not be taken against them, while listing the proposed action to be taken against M/s XXX and Mr. Z.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX.

***

SUGGESTED SOLUTION

(PAN-level scan and summons, Denial of the option under Rule 6, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX Home Store, Prop. Mr. Z, Bhopal CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Madhya Pradesh Goods and Services Tax Act, 2017 [MPGST Act] and the Rules made under the two Acts):

1. **Proviso to Section 10(2) of the CGST Act, 2017** - 'where more than one registered person are having the same Permanent Account Number, the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section'. Mr. Z has two registered persons (GSTIN-1 and GSTIN-2) on the same PAN; GSTIN-1 opted, GSTIN-2 did not and pays tax under Section 9. The option of GSTIN-1 was therefore not available to it. (The Master Chart, Template VII-A, Sl. 7, cites merely 'Section 10'; the condition is in this proviso, and not in any of the clauses (a) to (f) of Section 10(2).)
2. **Section 10(1) read with Rule 6(1) of the CGST Rules, 2017** - the option is valid only so long as all the conditions of Section 10 are satisfied; the condition of the proviso was not satisfied on 01.04.2024, so the option was invalid from the first day.
3. **Section 9(1) of the CGST Act, 2017** - non-payment of tax at the regular rate of 18% on the supplies of GSTIN-1 for FY 2024-25 (Rs.1,30,00,000/-); only the composition tax at 1% was paid.
4. **Section 31(1) read with Rule 46, and Sections 37 and 39** - bills of supply instead of tax invoices, and the regular returns not furnished by GSTIN-1.

Note: *The Chart's mention of Section 122(1A) for this row is not applicable; Section 122(1A) applies only where the person retains the benefit of a transaction covered by clauses (i), (ii), (vii) or (ix) of Section 122(1). There is also no contravention by GSTIN-2: the manufacturing unit has correctly paid tax under Section 9. The condition is breached by the unit that opted, not by the unit that did not.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose GSTIN-1 (M/s XXX Home Store, Mr. Z) to the following action under the CGST Act, 2017 (read with the corresponding provisions of the MPGST Act, 2017):

1. Denial of the option (Rule 6) - by FORM GST CMP-05, CMP-06 and CMP-07 [Rule 6(4) and (5)]. The order operates from the date of the option or from the date of the contravening event; since the proviso to Section 10(2) was not satisfied on the very day of the option, the order of 20.10.2025 operates from 01.04.2024, and the option is invalid for the whole of FY 2024-25. Rule 6(7) (reading of the rule to be verified before issue) provides that an intimation, withdrawal or denial relating to one place of business is treated as relating to all places of business registered on the same PAN; the point is considered in the Drafting notes.
2. Determination of tax - Section 10(5) read with Section 74A - tax at the regular rate under Section 9(1) on the entire supplies of the ineligible unit, with a penalty, determined under Section 74A, since the supplies pertain to FY 2024-25. The annual return for FY 2024-25 was due on 31.12.2025, so the notice may be issued up to 30.06.2029 [Section 74A(2)], and the order is to be passed within twelve months of the notice (extendable by six months) [Section 74A(7)]. Tax at 18% on Rs.1,30,00,000/- is Rs.23,40,000/-; less the composition tax of Rs.1,30,000/- already paid on the same supplies, the balance of Rs.22,10,000/- (Rs.11,05,000/- each under CGST and MPGST) is demanded (the balance each month is 17% of the turnover).
3. Rate of tax - plastic articles of heading 3924 were taxable at 18% in FY 2024-25; the rates changed with effect from 22.09.2025, and the period of this notice is therefore not affected. The rate must be verified from Notification No. 1/2017-Central Tax (Rate), as in force on the dates of supply, before issue.
4. Input tax credit - the credit of the GSTR-2B purchases of Rs.98,00,000/- (GST Rs.17,64,000/-) was not

available to GSTIN-1 during the period of composition [Section 10(4)] and none has been taken. The notice demands tax without allowing any credit. The Noticee may claim at adjudication that he should be given credit of the tax on purchases as a regular person would have had; this is not settled in the Act, the time limit of Section 16(4) for FY 2024-25 (30.11.2025, or the annual return, whichever is earlier) has already passed, and the officer must verify the current position before deciding. Credit of stock held on the date of withdrawal can be claimed in FORM GST ITC-01 under Section 18(1)(c) and Rule 6(6) within thirty days of the CMP-07 order, which is a separate matter.

5. Interest - Section 50(1) at 18% on the balance tax, from the day after the due date of FORM GSTR-3B of each month (20th of the following month) till payment; up to 30.11.2026 it is Rs.8,11,460/- (Rs.4,05,730/- each under CGST and MPGST).

6. Penalty - fraud or non-fraud? **Section 74A(5)(i)** is proposed: ten per cent of the tax due or Rs.10,000/-, whichever is higher, under each Act, i.e. Rs.1,10,500/- under CGST and Rs.1,10,500/- under MPGST (Rs.2,21,000/- in all). Reasons: the Noticee declared both registrations under the same PAN to the portal and in the income-tax return; both units' returns were filed on time and the tax at the correct rate was paid by GSTIN-2; the composition tax was paid regularly; books were produced voluntarily; and the Noticee had a professional advice (even though wrong) that each GSTIN is a separate person. There is no evidence of concealment or of any intent to evade the tax. Ignorance of the law is not a defence to the tax, but the absence of suppression or wilful misstatement is the basis of the lower penalty. The benefit of **Section 74A(8)** (no penalty if the tax and interest are paid within 60 days of the notice; and no notice if paid before) is mentioned in the notice. Section 74A(5)(ii) would be proposed if the evidence showed that the Noticee kept the second registration out of the scheme knowingly to benefit from both (for example, if the factory had been shifting sales to the retail unit to take advantage of the 1% rate).

7. Other penalties - no separate penalty under Section 122(1) is proposed, in view of Section 75(13) and Section 126; Section 122(1A) does not apply.

8. Consequence for the second unit (GSTIN-2) - M/s XXX Plastics has paid tax under Section 9 regularly, so no demand arises against it. It is not a party to the demand, but its registration is relevant in two ways: (a) it is the very reason why the option of GSTIN-1 fails; and (b) the aggregate turnover of the PAN for FY 2024-25 is Rs.2,25,00,000/-, above Rs.1.5 crore, so that for FY 2025-26 neither unit is eligible to opt (the limit is tested on the aggregate turnover of all registrations under the PAN), and the option of GSTIN-1, if continued in FY 2025-26, lapses or is invalid on that ground (as in Exercise-29). The Noticee should be advised to file FORM GST CMP-04 and to pay tax under Section 9 for GSTIN-1 from 01.04.2025 as well, if he has not done so.

9. Recovery, attachment and prosecution - recovery under Sections 78 and 79; attachment is not proposed; prosecution under Section 132 is not attracted, as the tax involved (Rs.22,10,000/-) is below the threshold of Rs.1 crore and there is no evidence of fraud.

Illustrative working of the tax and interest (up to 30.11.2026):

Month	Balance tax payable (Rs.)	Due date of GSTR-3B	Days to 30.11.2026	Interest @18% (Rs.)
April 2024	1,53,000	20.05.2024	924	69,718
May 2024	1,53,000	20.06.2024	893	67,378
June 2024	1,36,000	20.07.2024	863	57,880
July 2024	1,36,000	20.08.2024	832	55,800
August 2024	1,53,000	20.09.2024	801	60,438
September 2024	2,04,000	20.10.2024	771	77,564
October 2024	3,06,000	20.11.2024	740	1,11,670
November 2024	2,72,000	20.12.2024	710	95,238
December 2024	1,70,000	20.01.2025	679	56,924

Month	Balance tax payable (Rs.)	Due date of GSTR-3B	Days to 30.11.2026	Interest @18% (Rs.)
January 2025	1,36,000	20.02.2025	648	43,460
February 2025	1,19,000	20.03.2025	620	36,384
March 2025	2,72,000	20.04.2025	589	79,006
TOTAL	**22,10,000**			**8,11,460**

Particulars	Central tax (Rs.)	MP State tax (Rs.)	Total (Rs.)
Tax at 18% on Rs.1,30,00,000	11,70,000	11,70,000	23,40,000
Less: composition tax paid (1%)	65,000	65,000	1,30,000
Balance tax demanded	11,05,000	11,05,000	22,10,000
Interest up to 30.11.2026	4,05,730	4,05,730	8,11,460
Penalty 74A(5)(i) (10% of tax, higher than Rs.10,000)	1,10,500	1,10,500	2,21,000
TOTAL	**16,21,230**	**16,21,230**	**32,42,460**

Basis: *The credit of the composition tax is given against the tax of the same month, though paid quarterly, and interest is worked on the balance; there is no express provision for this adjustment, and it is made on the principle that the same supplies cannot be taxed twice. The value is taken as recorded (the Noticee charged no tax); a cum-tax claim, if any, will be examined at adjudication.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Home Store (GSTIN 23AAAAA0000A1Z1), a proprietary concern of Mr. Z, situated at YYYY Road, Bhopal, Madhya Pradesh, and Mr. Z, Proprietor of M/s XXX Home Store, in his personal capacity as the 'person' constituting the said proprietary concern (M/s XXX Home Store and Mr. Z being one and the same person in law), are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of CGST, Division - [•], Bhopal CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the option exercised by GSTIN-1 (M/s XXX Home Store) in FORM GST CMP-02 on 25.03.2024 to pay tax under Section 10(1) for FY 2024-25 should not be held to be invalid from 01.04.2024, in view of the proviso to Section 10(2) of the CGST Act, 2017/MPGST Act, 2017, since GSTIN-2 (M/s XXX Plastics), having the same PAN, did not opt to pay tax under that section and paid tax under Section 9, and the tax on the supplies of GSTIN-1 of Rs.1,30,00,000/- should not be held to be payable at the regular rate of 18% under Section 9(1);

(ii) an amount of Rs.11,05,000/- (Central tax) and Rs.11,05,000/- (Madhya Pradesh State tax), total Rs.22,10,000/- (Rupees Twenty-Two Lakh Ten Thousand only), being the balance of the tax at 18% (Rs.23,40,000/-) after giving credit for the composition tax paid (Rs.1,30,000/-), as detailed in Annexure-A, should not be demanded and recovered from them under Section 10(5) read with Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the due date of FORM GSTR-3B of each month till the date of payment;

(iv) a penalty of Rs.1,10,500/- (Central tax) and Rs.1,10,500/- (Madhya Pradesh State tax), total Rs.2,21,000/-, being ten per cent of the tax due, should not be imposed on them under Section 10(5) read with Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to

the benefit of nil penalty to which they may become entitled under Section 74A(8) on payment of the tax and interest within the time therein specified).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-BHOPAL

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner of CGST, Division - [●], Bhopal CGST Commissionerate, Madhya Pradesh

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Section 10(5) read with Section 74A of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Madhya Pradesh Goods and Services Tax Act, 2017)

To,
Mr. Z,
Proprietor, M/s XXX Home Store (GSTIN 23AAAAA0000A1Z1),
YYYY Road, Bhopal, Madhya Pradesh.

(hereinafter referred to as 'the Noticee', which expression shall, unless the context otherwise requires, include M/s XXX Home Store and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS Mr. Z, holding PAN AAAAA0000A, is the proprietor of two registered businesses: M/s XXX Home Store (GSTIN 23AAAAA0000A1Z1), a retail trader in plastic household articles, and M/s XXX Plastics (GSTIN 23AAAAA0000A2Z0), a manufacturer of such articles, both at Bhopal. The master data of the two GSTINs taken from the GST portal on 12.08.2025 on the basis of the PAN shows both registrations in the name of Mr. Z, with the same e-mail address and mobile number (RUD-1);

2. AND WHEREAS the Noticee filed FORM GST CMP-02 on 25.03.2024 for GSTIN-1 only, and opted to pay tax under Section 10 for FY 2024-25 (RUD-2). During FY 2024-25 the Noticee paid composition tax at 1% of Rs.1,30,00,000/-, i.e. Rs.1,30,000/-, through FORM GST CMP-08 (RUD-3), whereas GSTIN-2 did not opt, and filed FORM GSTR-1 and FORM GSTR-3B every month and paid tax under Section 9 at the regular rate on its turnover of Rs.95,00,000/- (RUD-4). The aggregate turnover of the PAN in FY 2024-25 was Rs.2,25,00,000/-;

3. AND WHEREAS a summons dated 25.08.2025 was issued under Section 70 and Mr. Z appeared on 03.09.2025 and produced the books of both units, the bank statement of the common current account, the salary register and the income-tax return (RUD-5 to RUD-7). His statement dated 03.09.2025 (RUD-8) records that he treated the two units as two businesses, opted for the retail unit alone on the advice of Mr. P, was not aware that all registrations under one PAN should opt together, did not collect any tax from the customers, and has not opted for the manufacturing unit as it needs credit; Mr. P confirmed the position in his statement dated 08.09.2025 (RUD-9);

4. AND WHEREAS the proviso to Section 10(2) of the Act provides that where more than one registered person are having the same Permanent Account Number, the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section. GSTIN-2, having the same PAN, did not opt and paid tax under Section 9. The option of GSTIN-1 was therefore not available to it from the date it was exercised;

5. AND WHEREAS a notice in FORM GST CMP-05 was issued on 15.09.2025 under Rule 6(4), the Noticee replied in FORM GST CMP-06 on 25.09.2025 and the proper officer denied the option by an order in FORM GST CMP-07 dated 20.10.2025 with effect from 01.04.2024 (RUD-10);

6. AND WHEREAS in terms of Section 10(5), a person who has paid tax under Section 10 despite not being eligible is liable to a penalty, in addition to the tax payable under the other provisions of the Act, and Section 74A applies for the determination of the tax and penalty. The tax at the regular rate of 18% on the supplies of GSTIN-1 of Rs.1,30,00,000/- is Rs.23,40,000/-; after giving credit for the composition tax paid, Rs.1,30,000/-, the balance of Rs.22,10,000/- (Rs.11,05,000/- each under CGST and MPGST) has not been paid (Annexure-A). No input tax credit has been taken and none is allowed during the period,

in view of Section 10(4);

7. AND WHEREAS no evidence of fraud, wilful misstatement or suppression of facts has come on record: the Noticee disclosed both registrations, filed the returns on time and produced his records voluntarily. The non-payment of tax is, therefore, appearing to be a case other than fraud, wilful misstatement or suppression of facts, attracting penalty under Section 10(5) read with Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017;

8. AND WHEREAS it thus appears that the Noticee has contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the MPGST Act, 2017):

- Proviso to Section 10(2) read with Section 10(1) and Rule 6(1) - opting for composition levy by one registration when another registration under the same PAN has not opted;
- Section 9(1) - non-payment of tax at the regular rate;
- Section 31(1) read with Rule 46, and Sections 37 and 39 - tax invoices not issued and returns not furnished for the regular scheme;

9. AND WHEREAS the aforesaid acts and omissions render the Noticee liable to:

(a) demand and recovery of tax under Section 10(5) read with Section 74A of the CGST Act, 2017/MPGST Act, 2017;

(b) interest under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017; and

(c) penalty under Section 10(5) read with Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017;

NOW, THEREFORE

M/s XXX Home Store (GSTIN 23AAAAA0000A1Z1), a proprietary concern of Mr. Z, situated at YYYY Road, Bhopal, Madhya Pradesh, and Mr. Z, Proprietor of M/s XXX Home Store, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner of CGST, Division - [•], Bhopal CGST Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the option exercised by GSTIN-1 (M/s XXX Home Store) in FORM GST CMP-02 on 25.03.2024 to pay tax under Section 10(1) for FY 2024-25 should not be held to be invalid from 01.04.2024, in view of the proviso to Section 10(2) of the CGST Act, 2017/MPGST Act, 2017, since GSTIN-2 (M/s XXX Plastics), having the same PAN, did not opt to pay tax under that section and paid tax under Section 9, and the tax on the supplies of GSTIN-1 of Rs.1,30,00,000/- should not be held to be payable at the regular rate of 18% under Section 9(1);

(ii) an amount of Rs.11,05,000/- (Central tax) and Rs.11,05,000/- (Madhya Pradesh State tax), total Rs.22,10,000/- (Rupees Twenty-Two Lakh Ten Thousand only), being the balance of the tax at 18% (Rs.23,40,000/-) after giving credit for the composition tax paid (Rs.1,30,000/-), as detailed in Annexure-A, should not be demanded and recovered from them under Section 10(5) read with Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from the due date of FORM GSTR-3B of each month till the date of payment;

(iv) a penalty of Rs.1,10,500/- (Central tax) and Rs.1,10,500/- (Madhya Pradesh State tax), total Rs.2,21,000/-, being ten per cent of the tax due, should not be imposed on them under Section 10(5) read with Section 74A(5)(i) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit of nil penalty to which they may become entitled under Section 74A(8) on payment of the tax and interest within the time therein specified).

10. The Noticee is further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately

intimated, and the Noticee (or an authorised representative) may appear in person or through counsel;

- attention is drawn to the benefit available under Section 74A(8) of the CGST Act, 2017/MPGST Act, 2017, whereby, if the tax at (ii) above and the interest at (iii) above are paid before the issue of this notice, no notice shall be served in respect of the said tax; and if they are paid within sixty (60) days of the issue of this notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded;
- the Noticee may raise, in the reply, any claim of credit or adjustment, and any contention based on Rule 6(7); this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/MPGST Act, 2017, or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Printouts of the master data of GSTIN-1 and GSTIN-2 taken from the GST portal on the basis of the PAN on 12.08.2025;

RUD-2: FORM GST CMP-02 dated 25.03.2024 of GSTIN-1;

RUD-3: FORM GST CMP-08 for the four quarters of FY 2024-25 with challans, and FORM GSTR-4 for FY 2024-25 of GSTIN-1;

RUD-4: FORM GSTR-1 and FORM GSTR-3B of GSTIN-2 for FY 2024-25;

RUD-5: Books of accounts, bills of supply and sales register of GSTIN-1 for FY 2024-25 produced on 03.09.2025;

RUD-6: Statement of the common current account and the salary register of both units;

RUD-7: Income-tax return of Mr. Z for the AY 2025-26;

RUD-8: Statement of Mr. Z recorded on 03.09.2025 under Section 70;

RUD-9: Statement of Mr. P recorded on 08.09.2025 under Section 70;

RUD-10: FORM GST CMP-05 dated 15.09.2025, the reply in FORM GST CMP-06 dated 25.09.2025 and the order in FORM GST CMP-07 dated 20.10.2025;

Annexure-A: Month-wise computation of tax at 18%, composition tax adjusted, balance tax and interest [as per the tables in Part B and in the Situation].

(_____)
Deputy/Assistant Commissioner, CGST
Division - [•], Bhopal CGST Commissionerate

Copy to: The Additional/Joint Commissioner, Bhopal CGST Commissionerate, for information.

Drafting note (not part of the notice):

- *The addressee, GSTINs, PAN, jurisdictional office, F. No./DIN and dates shown in square brackets/blanks or as placeholders are illustrative and must be completed with the correct particulars before issue. The dates of the portal search, summons and CMP-05/06/07 are part of the illustration.*
- ***Teaching point - the PAN-level condition.*** *Eligibility for the composition scheme is not tested registration by registration: under the proviso to Section 10(2), a registered person is eligible to opt only if all the registered persons having the same PAN opt. Opting by one unit while another pays tax under Section 9 invalidates the option from the first day, so the whole year's supplies of the opting unit are taxed at the regular rate with an adjustment of the composition tax paid. The second unit is untouched (no demand), but, with the PAN-level aggregate turnover above the limit, neither can opt in the next year. Compare Exercise-29 (a person who was eligible at the time of opting, and who loses the benefit from the date of crossing the turnover limit or of making inter-State supplies) and Exercise-28 (a valid composition dealer*

who collects tax from the customers). Compare also Exercise-81 (ineligibility by reason of the nature of the goods).

- ***Fraud or non-fraud?*** *The facts show a bona fide misunderstanding on the advice of a professional, with full disclosure, so the penalty is Section 74A(5)(i) with the benefit of Section 74A(8) (as in Exercise-02). It would be otherwise if the evidence showed that the second unit was deliberately kept out of the scheme to route sales through the 1% unit; in that case a charge under Section 74A(5)(ii) would need that evidence in the body of the notice.*
- ***Point to verify before issue - deeming rule.*** *Rule 6(7) (and the corresponding rule on the intimation) is understood to treat an intimation, withdrawal or denial for one place of business as that for all places of business registered on the same PAN. If the portal applied that deeming to GSTIN-2, the Noticee will argue that both GSTINs stood opted and the proviso was satisfied. The answer on the facts is that GSTIN-2 in fact paid tax under Section 9 throughout and was never placed in the composition scheme on the portal, and that the Noticee himself says it did not opt. The officer should check the exact text of the rule and the portal position of GSTIN-2.*
- ***Stock transfers between the units*** *(the registrations of one person being treated as distinct persons under Section 25(4), to be verified from the Act if the facts are changed to include them) are not included in this exercise since no goods moved between the units; if they had, the supplies by GSTIN-2 to GSTIN-1 would also have to be examined.*
- ***Authority.*** *The central tax demand is Rs.11,05,000/-; in terms of the monetary limits of Circular No. 31/05/2018-GST dated 09.02.2018, a central tax demand above Rs.10 lakh and up to Rs.1 crore is for the Deputy/Assistant Commissioner, who issues and adjudicates the notice.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 83

Deletion of Tally entries and backups and substitution of the stock register after search and summons - Section 122(1)(xx), Section 122(1)(x), Section 122(3)(a) and Section 74A

Exercise 83: Deletion of Tally entries and backups and substitution of the stock register after search and summons - Section 122(1)(xx), Section 122(1)(x), Section 122(3)(a) and Section 74A

Situation in Brief:

1. M/s XXX, proprietary concern of Mr. Z, of YYYY, Jawahar Marg, Indore, Madhya Pradesh, is a registered wholesale trader of electrical switches, sockets and fittings (HSN 8536, taxable at 18%: 9% central tax and 9% State tax). It files FORM GSTR-1 and FORM GSTR-3B monthly, maintains its accounts in Tally Prime on an office desktop (the 'server') with a daily cloud backup service run by its IT vendor, M/s AAA (proprietor Mr. Q), and keeps a hardbound 'Stock Register 2025-26' of 212 pages. Mr. P is its accountant. Intelligence showed that the firm was making unbilled cash sales, and on 05.01.2026 the Additional Commissioner, CGST, Indore authorised a search of its office-cum-godown under Section 67 of the CGST Act, 2017 (FORM GST INS-01).

2. **Search of 06.01.2026.** The search was conducted in the presence of Mr. Z and two independent witnesses. The panchnama dated 06.01.2026 records that (a) a laptop used by Mr. Z, a 32 GB pen drive and a 1 TB external hard disk (which carried the Tally backup dated 05.01.2026) were seized under Section 67(2) (FORM GST INS-02); (b) the Tally data folder of the office desktop was copied on the spot, by a forensic examiner, Mr. R, through a write-blocker, and the SHA-256 hash value of the copy ('Image A') was read out, recorded in the panchnama and signed by Mr. Z and the witnesses; the desktop itself was left with the firm for its daily work, with a written direction not to alter, delete or overwrite any data; (c) the 212 pages of the hardbound Stock Register 2025-26 were scanned page by page and the scan was signed by Mr. Z on each page, the original being left with the firm; and (d) the DVR of the office CCTV was found working, with a retention of 30 days.

3. Image A shows, under the ledger 'Cash Sales - Unbilled', 1,184 sales vouchers for October to December 2025 for which no tax invoice had been issued and which were not reported in FORM GSTR-1 or FORM GSTR-3B. The month-wise position, compared with the turnover reported in the returns, is as follows:

Month	Reported in GSTR-3B (Rs.)	Unbilled sales in Image A (Rs.)	Vouchers (No.)
Oct-2025	1,12,40,000	38,50,000	392
Nov-2025	1,20,80,000	46,20,000	371
Dec-2025	1,24,60,000	52,30,000	421
TOTAL	**3,57,80,000**	**1,37,00,000**	**1,184**

4. A summons dated 12.01.2026 under Section 70 of the CGST Act, 2017 was served on Mr. Z on 12.01.2026 (acknowledged by him), calling upon him to appear on 16.01.2026 and to produce the Tally data up to date, the Stock Register, the cloud backup records and the bank statements. The firm filed its FORM GSTR-3B for December 2025 on 20.01.2026, showing a turnover of Rs.1,24,60,000/-, the same as the billed turnover.

5. On 16.01.2026 Mr. Z appeared and produced the desktop (with Tally data) and a Stock Register, which he described as the 'original' one. The Tally data did not contain the ledger 'Cash Sales - Unbilled' or any of the 1,184 vouchers, and the Stock Register had only 198 pages in a single hand and a single ink, with fresh binding. Suspecting tampering, the Additional Commissioner authorised a second search on 16.01.2026, and on 17.01.2026 the desktop and the CCTV DVR were seized and imaged ('Image B' for the desktop and 'Image C' for the DVR), with hash values recorded in the panchnama of 17.01.2026, in the same manner as on 06.01.2026.

6. **Forensic report of Mr. R dated 25.02.2026** (with the certificate under Section 145(2) of the CGST Act, 2017 and the certificate in the Schedule under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023, Parts A and B) records that: (a) the hash values of Image A and Image B differ, while the hash values of the seized laptop, pen drive and hard disk, recomputed on 24.02.2026, are the same as those recorded on 06.01.2026; (b) the Tally data in Image B shows that the ledger 'Cash Sales - Unbilled' and the 1,184 vouchers (392 for October, 371 for November and 421 for December 2025) were deleted on

14.01.2026 between 22:31 and 23:58 hours from the user account 'Accounts' of the desktop; (c) all 1,184 vouchers were recovered, with the same voucher numbers, dates and amounts, from Image A, from the Tally backup dated 05.01.2026 on the seized hard disk and from the Windows Volume Shadow Copy dated 14.01.2026 (18:00 hours) in Image B; (d) the vendor's server log shows that on 14.01.2026 at 23:05 hours the remote-access user 'aaa_support' logged in to the firm's cloud account and deleted all 105 daily backup snapshots from 01.10.2025 to 13.01.2026, and the log has been preserved by M/s AAA and handed over to the department on 22.01.2026; and (e) the system clock and the user log show that no external storage was attached and no backup was taken to any other place.

7. **CCTV (Image C).** The footage shows that on 14.01.2026 Mr. P and Mr. Q entered the office at 21:48 hours; Mr. Q worked on a laptop at the desktop of the accounts section from 22:20 to 00:05 hours; Mr. P was writing in a bound register at the central desk from 00:26 to 02:00 hours with a bunch of stock register sheets and a notebook before him; and both left at 02:12 hours on 15.01.2026, Mr. P carrying a black bag and a bundle of old sheets, which he put in a drum in the back lane and set on fire at 02:19 hours (visible on the camera at the rear gate).

8. The statement of **Mr. P** was recorded on 21.01.2026 under Section 70 of the CGST Act, 2017, wherein he stated that: he has been the accountant of the firm for nine years; the 'Cash Sales - Unbilled' ledger was kept at the instance of Mr. Z, who gave him the cash received every evening; on 13.01.2026 Mr. Z told him 'saaf kar do, sab bill wala dikhna chahiye' (clean up, only the billed sales should appear); on 14.01.2026 he called Mr. Q, who deleted the ledger and the backups; he himself then prepared a new Stock Register from memory and from the billed invoices, which he made to look old by rubbing it, and burnt the 212-page original and the sheets of the old register at the rear gate; and he was paid Rs.20,000/- extra in cash by Mr. Z for the work.

9. The statement of **Mr. Q** was recorded on 22.01.2026 under Section 70, wherein he admitted that M/s AAA has been the firm's IT vendor since 2021; that on 14.01.2026 at about 22:00 hours Mr. P called him to the office and asked him to delete the ledger and 'all backups before the department takes them'; that he deleted the ledger on the desktop and, using the vendor's admin account, the 105 backup snapshots; that he knew the summons was pending; and that he received Rs.15,000/- in cash from Mr. P the next day.

10. The statement of **Mr. Z** was recorded on 23.01.2026 under Section 70. He accepted that he had maintained the 'Cash Sales - Unbilled' ledger, that the unbilled sales of Rs.1,37,00,000/- (October to December 2025) were not reported in the returns, and that he told Mr. P on 13.01.2026 to 'clean up' after the summons arrived, but said that he did not know how it would be done and that the new register was prepared by Mr. P 'on his own'. The WhatsApp chat of 13.01.2026 (21:14 hours) between Mr. Z and Mr. P, recovered from the seized laptop, reads 'summons aaya hai - unbilled wala sab hata do, register bhi naya bana lo' (the summons has come; remove all the unbilled entries, and prepare a new register as well). Mr. P's reply is 'ho jayega' (it will be done).

11. The goods were taxable at 18% (9% central tax and 9% State tax), and the sales were cash sales without separate collection of tax. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX, Mr. P and M/s AAA (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX, Mr. P and M/s AAA (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX, Mr. P and M/s AAA, calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX, Mr. P and M/s AAA.

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SUGGESTED SOLUTION

(Inquiry on search and summons, Determination of Tax Liability under Section 74A, and Draft Show Cause Notice - M/s XXX, Prop. Mr. Z, Mr. P and M/s AAA, Indore CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Madhya Pradesh Goods and Services Tax Act, 2017 [MPGST Act] and the Rules made under the two Acts):

I. M/s XXX (Mr. Z) - the tax offence (the 'original' data)

1. **Section 9(1) read with Sections 15 and 31(1) of the CGST Act, 2017, and Rule 46** - supply of goods (HSN 8536) valued at Rs.1,37,00,000/- without issue of tax invoices and without payment of tax.
2. **Sections 37(1) and 39(1)** - the supplies are not reported in FORM GSTR-1 and FORM GSTR-3B for October, November and December 2025; **Section 35(1) read with Rule 56** - the parallel ledger 'Cash Sales - Unbilled' was kept outside the accounts on which the returns were based. This is the same suppression pattern as in Exercise-14; it is not the subject of this exercise and is dealt with only to the extent necessary.

II. M/s XXX (Mr. Z) - the tampering offences (after the summons)

3. **Section 122(1)(xx) of the CGST Act, 2017** - 'tampers with, or destroys any material evidence or document': the deletion of the ledger and 1,184 vouchers from the Tally data on 14.01.2026, the deletion of the 105 cloud backup snapshots, and the burning of the original Stock Register and the old sheets on 15.01.2026. The documents were material: they are the very records which the summons of 12.01.2026 called for and on which the demand rests.
4. **Section 122(1)(x)** - 'falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act': the substitution of the original Stock Register by a new one 'recreated' from memory and from billed invoices, and its production on 16.01.2026 as the original, with the Tally data from which the unbilled ledger had been removed. The intention to evade tax is shown by the content: the substituted records show only the billed supplies.
5. **Section 35(1) and Section 36 read with Rules 56 and 57** - the accounts (including the electronic records and their back-up) have to be maintained and retained for seventy-two months from the due date of furnishing the annual return; deletion of the ledger and the back-up, and destruction of the original register, is a breach of these provisions.
6. **Section 70(1) / Section 122(1)(xvii)** - the books produced in response to the summons were not the books maintained in the ordinary course, i.e. false documents were furnished during the proceedings. This is not charged separately, for the reasons given at B-6 below.

III. Mr. P (accountant) and M/s AAA (IT vendor)

7. **Section 122(3)(a) of the CGST Act, 2017** - Mr. P aided and abetted the offences under Section 122(1)(xx) and 122(1)(x): he received the instruction, deleted the ledger with Mr. Q, prepared the substitute register and burnt the original. M/s AAA (Mr. Q), as the IT vendor, aided and abetted the offence under Section 122(1)(xx) by deleting the ledger and the 105 backups remotely, with the knowledge of the pending summons. Neither of them is a 'taxable person' who could himself commit an offence under Section 122(1); Section 122(3)(a) reaches 'any person' who aids or abets any of the offences in clauses (i) to (xxi) of Section 122(1).

Note: *Considered and not invoked: (a) Section 122(1)(xiii) (obstruction of an officer) - there was no physical obstruction of the officers in the discharge of their duties; the case is of destruction of evidence, which is covered by the specific clause (xx) (see Exercise-32 for obstruction); (b) Section 122(1)(xvii) and Section 122(3)(d) - the summons was complied with in form (Mr. Z appeared on 16.01.2026), and the false documents are covered by clause (x); (c) Section 122(1)(xxi) - no goods were seized or detained (Exercise 84 deals with seized goods); (d) Section 125 - the residual penalty is not used where a specific clause applies; (e) Section 132(1)(j) - the clause on*

tampering with evidence has been omitted from Section 132 with effect from 01.10.2023, so destruction of evidence, as such, is no longer a prosecution offence under the GST Act (the cover of the criminal law is the Bharatiya Nyaya Sanhita, 2023, see B-9).

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose M/s XXX, Mr. P and M/s AAA to the following action under the CGST Act, 2017 (read with the MPGST Act, 2017):

1. Demand of tax - under **Section 74A(1)** of the CGST Act, 2017 (and the MPGST Act) on the unbilled sales of Rs.1,37,00,000/- for October to December 2025, i.e. in FY 2025-26 [Section 74A(12)]. The annual return for FY 2025-26 is due on 31.12.2026, so the notice may be issued up to 30.06.2030 [Section 74A(2)]; the order is to be made within twelve months, extendable by six months [Section 74A(7)]. The tax is Rs.24,66,000/- (central tax Rs.12,33,000/- and MPGST Rs.12,33,000/-). The demand rests on the original data (Image A, the seized hard disk and the shadow copy), not on the tampered data; this is the key point of the exercise - the destruction of the evidence did not destroy the evidence, and the tax has to be demanded on what the recovered data proves.
2. Interest - under **Section 50(1)** at 18% per annum from the day after the due date of FORM GSTR-3B of each month, up to 30.11.2026, Rs.4,15,420/- (Rs.2,07,710/- each under the CGST and MPGST Acts), as per the working below.
3. Penalty on M/s XXX for the tax offence - **Section 74A(5)(ii)**: penalty equal to the tax, Rs.24,66,000/- (Rs.12,33,000/- each), as the non-payment was by suppression - a ledger of unbilled sales kept for the purpose, cash sales without bills, and no reporting in the returns. The concessions under Section 74A(9) (15% of the tax before notice, 25% within 60 days of the notice and 50% within 60 days of the order, with the tax and interest) are available.
4. Penalty on M/s XXX for the tampering - **Section 122(1)(xx)**: ten thousand rupees, or an amount equal to the tax evaded, etc., whichever is higher. Clause (xx) has no tax measure - destruction of evidence is not itself non-payment of tax - so the penalty is the fixed Rs.10,000/- under each Act (total Rs.20,000/-). This is an act (the destruction on 14/15.01.2026, after the summons) different from the act punished under Section 74A(5)(ii) (non-payment of tax by suppression in October to December 2025), so Section 75(13) is not a bar. (The Master Chart, Template IX row 5, says 'which may extend to Rs.25,000'; that is the wording of Section 122(3) and of Section 125, not of Section 122(1); the Act is followed.)
5. Penalty on Mr. P and M/s AAA - **Section 122(3)(a)**: penalty which may extend to Rs.25,000/- on each (Rs.25,000/- under each Act, as in Exercise 49). Mr. P is the planner and doer (deletion, new register, burning) and M/s AAA the technical hand (deletion of the 105 backups); the extent of participation is the same in the statements and in the CCTV and the vendor's log, and the penalty is therefore proposed at the maximum for both.
6. No double counting (Section 75(13)) - the table below fixes which penalty is imposed for which act. For the substitution of the register, Section 122(1)(x) would carry the measure of tax evaded, i.e. the same tax of Rs.24,66,000/- which is already covered by Section 74A(5)(ii); and the production of the substituted register in the inquiry is also within Section 122(1)(xvii). The notice therefore keeps clause (x) 'in the alternative and without prejudice' to Section 74A(5)(ii) and subject to Section 75(13), and proposes no separate amount under clauses (x) or (xvii), as the alternative penalties are kept in Exercise-52. Penalties on Mr. P and M/s AAA are on different persons and for abetment, not for the same act of the same person.
7. Recovery - under Sections 78 and 79 if the amount confirmed is not paid; provisional attachment of the bank accounts and stock under **Section 83** is open while proceedings are pending (Chapter XIV search proceedings were pending from 06.01.2026) if the department fears that the proceeds of the unbilled sales will be dissipated; it ceases after one year [Section 83(2)]. Section 83 is not extended to Mr. P or Mr. Q: attachment reaches persons specified in Section 122(1A), who are not proposed to be charged here since Mr. Z is himself the registered person.
8. Prosecution (not part of the notice) - **Section 132(1)(f)** ('falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act') is made out by the substitution of the register and the production of

the Tally data without the unbilled ledger. Under Section 132(1)(iv) the punishment is imprisonment up to six months, or fine, or both, whatever the amount of tax; the offence is non-cognizable and bailable [Section 132(4)] and needs the previous sanction of the Commissioner [Section 132(6)]. Section 132(1)(l) reaches the abettors Mr. P and Mr. Q (the Chart says 'same tier as the underlying offence'). The offence can be compounded under Section 138, but only after the tax, interest and penalty involved are paid, for 25% to 100% of the tax involved [Section 138(2)]; a person already compounded once for the offences listed in the proviso, or convicted, is excluded. The notice only records that the matter is being separately examined for prosecution (see the contrast with Exercise 49, a prosecution for fake ITC).

9. Other law - destruction of the records and the burning of the register are also offences under the **Bharatiya Nyaya Sanhita, 2023**: Section 241 (destruction of document or electronic record to prevent its production as evidence) and Section 238 (causing disappearance of evidence of an offence, or giving false information to screen the offender). The statements recorded under Section 70 are in a proceeding deemed to be a judicial proceeding for the purpose of the false-evidence offences [Section 70(2)], and Section 229 BNS prescribes the punishment for false evidence. These are matters for a report to the Magistrate or a complaint by the officer; they are not charged in a notice under the GST Act and have no bearing on the compounding limits of Section 138, which is concerned with the GST offences only. (BNS sections are quoted from secondary sources and are to be verified against the Gazette text before use in a complaint.)

Teaching point - handling of electronic evidence so that the tampering is provable (the 'chain' from the search to the notice):

Step	What the officer must do	Where it is proved in this case
1. Authorisation	Written authorisation by an officer not below the rank of Joint Commissioner [Section 67(2)] in FORM GST INS-01 naming the premises and the officers	Authorisation of 05.01.2026 and 16.01.2026 (RUD-1, RUD-8)
2. Imaging on the spot	Bit-by-bit copy through a write-blocker by a trained examiner, before anything is switched off; the original device is sealed or left under a written direction	Panchnama of 06.01.2026: Image A of the Tally data folder; laptop, pen drive and disk seized (RUD-2)
3. Hash value	SHA-256 (or equivalent) read aloud, written in the panchnama and signed by the owner and the independent witnesses; any later change to the hash shows alteration	Hashes of Image A and the seized devices, recomputed on 24.02.2026, unchanged; hash of Image B different (RUD-3)
4. Chain of custody	Seizure list (FORM GST INS-02), sealed bags, malkhana register, who opened what and when	Custody register of the Division (RUD-4)
5. Certificates	Certificate under Section 145(2) of the CGST Act (identifying the document, how it was produced and the device used) and the certificate in the Schedule to Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023 (Part A by the person in charge of the device, Part B by the expert, disclosing the hash value)	Forensic report of Mr. R dated 25.02.2026 with both certificates (RUD-3)
6. Independent proof	Corroboration which does not depend on the accused: CCTV, remote-access logs of the vendor, chats on the seized phone or laptop	Image C, vendor's log, WhatsApp chat of 13.01.2026 (RUD-5, RUD-6, RUD-7)
7. Statements	Statements under Section 70 recorded after the evidence is put to the person	Statements of Mr. P, Mr. Q and Mr. Z (RUD-9 to RUD-11)

Which penalty for which act (no double counting):

Person / act	Provision	Penalty (Rs.)	Why / why not
M/s XXX - unbilled sales Oct-Dec 2025 (suppression)	74A(5)(ii)	24,66,000	Penalty equal to the tax; 122(1)(i)/(xv) not added (75(13))
M/s XXX - deletion of ledger and backups, burning of register	122(1)(xx)	20,000	No tax measure; separate act after the summons
M/s XXX - substitution of register / false books produced	122(1)(x) and (xvii)	Nil separately	Measure would be the same tax; kept in the alternative, subject to 75(13)
Mr. P - abetment of (xx) and (x)	122(3)(a)	50,000	Rs.25,000 under each Act
M/s AAA (Mr. Q) - abetment of (xx)	122(3)(a)	50,000	Rs.25,000 under each Act
TOTAL penalties proposed		**25,86,000**	**Without prejudice to Section 74A(9)**

Illustrative working of the tax and interest proposed to be demanded (central tax and MPGST each @ 9%; interest @ 18% from the day after the due date to 30.11.2026):

Month	Unbilled sales (Rs.)	Total tax (Rs.)	Each Act (Rs.)	Due date of GSTR-3B	Days	Interest, both Acts (Rs.)
Oct-2025	38,50,000	6,93,000	3,46,500	20.11.2025	375	1,28,158
Nov-2025	46,20,000	8,31,600	4,15,800	20.12.2025	345	1,41,486
Dec-2025	52,30,000	9,41,400	4,70,700	20.01.2026	314	1,45,776
TOTAL	**1,37,00,000**	**24,66,000**	**12,33,000**			**4,15,420**

Basis: *The taxable value is taken as the amount recorded in the unbilled vouchers, no tax having been collected separately; if Mr. Z shows that the prices were tax-inclusive, cum-tax valuation can be considered at the adjudication stage. Interest is worked per head on each month's tax as (tax x 18% x days / 365). The monthly figures (Rs.38,50,000, Rs.46,20,000, Rs.52,30,000 of unbilled sales) are taken from the vouchers recovered from Image A.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX, a proprietary concern of Mr. Z, situated at YYYY, Jawahar Marg, Indore, Madhya Pradesh, and Mr. Z, its Proprietor (one and the same person in law); Mr. P, Accountant, of YYYY, Indore; and M/s AAA, proprietary concern of Mr. Q, of YYYY, Indore, are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Indore Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the supplies of goods (HSN 8536) of aggregate value of Rs.1,37,00,000/- made by M/s XXX during October to December 2025, as recorded in the ledger 'Cash Sales - Unbilled' (1,184 vouchers) recovered from Image A, the seized hard disk and the Volume Shadow Copy, should not be held to be taxable supplies made without issue of invoices and without payment of tax, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) of the CGST Act, 2017/MPGST Act, 2017;

(ii) an amount of Rs.12,33,000/- (Central tax) and Rs.12,33,000/- (Madhya Pradesh State tax), total Rs.24,66,000/- (Rupees Twenty-Four Lakh Sixty-Six Thousand only), being tax not paid on the supplies at (i) above, as detailed in Annexure-A, should not be demanded and recovered from M/s XXX under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017 should not be charged and recovered from M/s XXX on the tax at (ii) above, from the day after the due date of FORM GSTR-3B of each month (21.11.2025, 21.12.2025 and 21.01.2026) till the date of

payment;

(iv) a penalty of Rs.12,33,000/- (Central tax) and Rs.12,33,000/- (Madhya Pradesh State tax), total Rs.24,66,000/-, being equal to the tax due, should not be imposed on M/s XXX under Section 74A(5)(ii) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) a penalty of Rs.10,000/- under the CGST Act, 2017 and Rs.10,000/- under the MPGST Act, 2017 should not be imposed on M/s XXX under Section 122(1)(xx) for tampering with and destroying material evidence and documents on 14.01.2026 and 15.01.2026;

(vi) a penalty should not separately be imposed on M/s XXX under Section 122(1)(x) of the CGST Act, 2017/MPGST Act, 2017 for substituting and producing false records with intent to evade tax, in the alternative and without prejudice to (iv) above and subject to Section 75(13) of the CGST Act, 2017;

(vii) a penalty of Rs.25,000/- under the CGST Act, 2017 and Rs.25,000/- under the MPGST Act, 2017 should not be imposed on Mr. P under Section 122(3)(a) for aiding and abetting the offences under Section 122(1)(xx) and 122(1)(x); and

(viii) a penalty of Rs.25,000/- under the CGST Act, 2017 and Rs.25,000/- under the MPGST Act, 2017 should not be imposed on M/s AAA (Mr. Q) under Section 122(3)(a) for aiding and abetting the offence under Section 122(1)(xx).

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-INDORE

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy Commissioner, CGST Division - [●], Indore Commissionerate, Madhya Pradesh

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Sections 74A and 122 of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Madhya Pradesh Goods and Services Tax Act, 2017)

To,
1. Mr. Z, Proprietor, M/s XXX, YYYY, Jawahar Marg, Indore, Madhya Pradesh (GSTIN: [●]);
2. Mr. P, Accountant, M/s XXX, residing at YYYY, Indore;
3. Mr. Q, Proprietor, M/s AAA, YYYY, Indore.

(hereinafter referred to as 'Noticee-1', 'Noticee-2' and 'Noticee-3' respectively, and collectively as 'the Noticees'; Noticee-1 includes M/s XXX and Mr. Z, the two being one and the same 'person' within the meaning of Section 2(84) of the CGST Act, 2017)

WHEREAS M/s XXX is registered under the CGST Act, 2017 and the MPGST Act, 2017 as a wholesale trader of electrical switches, sockets and fittings (HSN 8536, taxable at 18%), files FORM GSTR-1 and FORM GSTR-3B monthly, and keeps its accounts in Tally Prime on an office desktop, with a cloud backup run by M/s AAA, and a hardbound Stock Register 2025-26 of 212 pages;

2. AND WHEREAS on the authorisation of the Additional Commissioner, CGST, Indore dated 05.01.2026 (FORM GST INS-01) (RUD-1), the office-cum-godown of M/s XXX was searched under Section 67 of the CGST Act, 2017 on 06.01.2026, in the presence of Mr. Z and two independent witnesses. As recorded in the panchnama of that date (RUD-2), a laptop, a pen drive and an external hard disk were seized under Section 67(2) (FORM GST INS-02); the Tally data folder of the office desktop was copied on the spot through a write-blocker by the forensic examiner Mr. R ('Image A'), and its SHA-256 hash value was read out, recorded and signed by Mr. Z and the witnesses; and the pages of the Stock Register were scanned and signed;

3. AND WHEREAS Image A shows 1,184 sales vouchers under the ledger 'Cash Sales - Unbilled' for October, November and December 2025 (392, 371 and 421 vouchers respectively), of the aggregate value of Rs.1,37,00,000/-, which were not covered by tax invoices and were not reported in FORM GSTR-1 or FORM GSTR-3B. The same vouchers are found in the Tally backup dated 05.01.2026 on the seized hard disk. The turnover reported in FORM GSTR-3B for the three months is Rs.3,57,80,000/-. The details are at Annexure-A (RUD-3, RUD-4);

4. AND WHEREAS a summons dated 12.01.2026 under Section 70 of the CGST Act, 2017 was served on Mr. Z on 12.01.2026 requiring the production of the Tally data, the Stock Register, the cloud backup records and the bank statements on 16.01.2026 (RUD-5). Between the service of the summons and the appearance, the following occurred on the night of 14.01.2026:

- the ledger 'Cash Sales - Unbilled' and all 1,184 vouchers were deleted from the Tally data between 22:31 and 23:58 hours from the user account 'Accounts' of the desktop;
- at 23:05 hours the remote-access user 'aaa_support' of M/s AAA deleted all 105 daily backup snapshots from 01.10.2025 to 13.01.2026 from the cloud account of M/s XXX;
- Mr. P wrote a new stock register of 198 pages from memory and from the billed invoices and, at 02:19 hours on 15.01.2026, burnt the original 212-page Stock Register and the old sheets in a drum in the rear lane of the premises;

5. AND WHEREAS Mr. Z appeared on 16.01.2026 and produced the desktop with Tally data and the new register as the 'original' books. The Tally data did not contain the ledger 'Cash Sales - Unbilled' and the register had only 198 pages in one hand and ink, against the 212 pages scanned on 06.01.2026. On the

authorisation dated 16.01.2026 the desktop and the CCTV DVR were seized on 17.01.2026 and imaged ('Image B' and 'Image C'), with the hash values recorded in the panchnama of that date (RUD-6, RUD-8);

6. AND WHEREAS the forensic report dated 25.02.2026 of Mr. R, with the certificate under Section 145(2) of the CGST Act, 2017 and the certificate under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023 (Parts A and B), (RUD-7) establishes that (a) the hash value of Image B differs from that of Image A, whereas the hash values of the seized laptop, pen drive and hard disk are unchanged since 06.01.2026; (b) the deleted ledger and all 1,184 vouchers were recovered with identical voucher numbers, dates and amounts from Image A, the seized hard disk and the Volume Shadow Copy of 14.01.2026; and (c) no external storage was connected and no backup was taken to any other place. The vendor's server log (RUD-9) records the deletion of the 105 snapshots by 'aaa_support' at 23:05 hours on 14.01.2026, and the CCTV footage (Image C) (RUD-10) shows Mr. P and Mr. Q in the office from 21:48 hours on 14.01.2026 to 02:12 hours on 15.01.2026, Mr. Q working at the desktop of the accounts section, Mr. P writing in a register, and the burning of the old sheets at 02:19 hours;

7. AND WHEREAS in his statement dated 21.01.2026 under Section 70 (RUD-11) Mr. P stated that Mr. Z told him on 13.01.2026 to 'clean up' so that only the billed sales appear; that he called Mr. Q, who deleted the ledger and the backups; that he prepared the new register from memory and from the billed invoices and burnt the original; and that he was paid Rs.20,000/- in cash. In his statement dated 22.01.2026 (RUD-12) Mr. Q admitted that he deleted the ledger and the 105 snapshots on 14.01.2026 on the request of Mr. P, with the knowledge that the summons was pending, and was paid Rs.15,000/-. In his statement dated 23.01.2026 (RUD-13) Mr. Z accepted the 'Cash Sales - Unbilled' ledger, the non-reporting of the sales of Rs.1,37,00,000/- and his instruction of 13.01.2026 to 'clean up'. The WhatsApp chat of 13.01.2026 (21:14 hours) between Mr. Z and Mr. P, recovered from the seized laptop (RUD-14), reads 'summons aaya hai - unbilled wala sab hata do, register bhi naya bana lo', to which Mr. P replied 'ho jayega';

8. AND WHEREAS it appears that Noticee-1 supplied goods of the value of Rs.1,37,00,000/- in October to December 2025 without issue of invoices, without reporting them in the returns and without payment of tax, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) of the CGST Act, 2017/MPGST Act, 2017, and the tax payable at 18% on the said value is Rs.12,33,000/- each under the CGST Act and the MPGST Act, total Rs.24,66,000/-. The maintenance of a separate ledger of unbilled sales, cash sales without bills, the omission of the sales from the returns and, finally, the deletion of the records after the summons, show that the non-payment is by reason of suppression of facts with intent to evade tax, attracting Section 74A(5)(ii);

9. AND WHEREAS it appears that after the service of the summons, Noticee-1, through and with the help of Noticee-2 and Noticee-3, tampered with and destroyed material evidence and documents (the Tally ledger and vouchers, the cloud backups and the original Stock Register), attracting Section 122(1)(xx), and substituted the Stock Register and produced the Tally data without the unbilled ledger as the genuine books, with intent to evade tax, attracting Section 122(1)(x) of the CGST Act, 2017/MPGST Act, 2017. Noticee-2 and Noticee-3 aided and abetted these offences and are liable under Section 122(3)(a);

10. AND WHEREAS it thus appears that the Noticees have contravened the following provisions of the CGST Act, 2017 (and the corresponding provisions of the MPGST Act, 2017):

- Sections 9(1), 31(1), 37(1) and 39(1) - supply without invoice, non-reporting and non-payment of tax (Noticee-1);
- Sections 35(1) and 36 read with Rules 56 and 57 - failure to maintain and retain the accounts, including the electronic back-up (Noticee-1);
- Section 122(1)(xx) - tampering with and destruction of material evidence and documents (Noticee-1);
- Section 122(1)(x) - substitution of financial records and production of false accounts with intent to evade tax (Noticee-1);
- Section 122(3)(a) - aiding and abetting the said offences (Noticee-2 and Noticee-3);

11. AND WHEREAS the aforesaid acts and omissions render the Noticees liable to action under Sections 74A, 50(1) and 122 of the CGST Act, 2017/MPGST Act, 2017, as stated below. The matter of prosecution under Section 132 of the CGST Act, 2017 and of a report under the Bharatiya Nyaya Sanhita, 2023 is

being examined separately and is not the subject of this notice;

NOW, THEREFORE

Noticee-1 (M/s XXX, through its Proprietor Mr. Z), Noticee-2 (Mr. P) and Noticee-3 (M/s AAA, through its Proprietor Mr. Q) are hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Indore Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the supplies of goods (HSN 8536) of aggregate value of Rs.1,37,00,000/- made by M/s XXX during October to December 2025, as recorded in the ledger 'Cash Sales - Unbilled' (1,184 vouchers) recovered from Image A, the seized hard disk and the Volume Shadow Copy, should not be held to be taxable supplies made without issue of invoices and without payment of tax, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) of the CGST Act, 2017/MPGST Act, 2017;

(ii) an amount of Rs.12,33,000/- (Central tax) and Rs.12,33,000/- (Madhya Pradesh State tax), total Rs.24,66,000/- (Rupees Twenty-Four Lakh Sixty-Six Thousand only), being tax not paid on the supplies at (i) above, as detailed in Annexure-A, should not be demanded and recovered from M/s XXX under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the MPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/MPGST Act, 2017 should not be charged and recovered from M/s XXX on the tax at (ii) above, from the day after the due date of FORM GSTR-3B of each month (21.11.2025, 21.12.2025 and 21.01.2026) till the date of payment;

(iv) a penalty of Rs.12,33,000/- (Central tax) and Rs.12,33,000/- (Madhya Pradesh State tax), total Rs.24,66,000/-, being equal to the tax due, should not be imposed on M/s XXX under Section 74A(5)(ii) of the CGST Act, 2017/MPGST Act, 2017 (without prejudice to the benefit available under Section 74A(9));

(v) a penalty of Rs.10,000/- under the CGST Act, 2017 and Rs.10,000/- under the MPGST Act, 2017 should not be imposed on M/s XXX under Section 122(1)(xx) for tampering with and destroying material evidence and documents on 14.01.2026 and 15.01.2026;

(vi) a penalty should not separately be imposed on M/s XXX under Section 122(1)(x) of the CGST Act, 2017/MPGST Act, 2017 for substituting and producing false records with intent to evade tax, in the alternative and without prejudice to (iv) above and subject to Section 75(13) of the CGST Act, 2017;

(vii) a penalty of Rs.25,000/- under the CGST Act, 2017 and Rs.25,000/- under the MPGST Act, 2017 should not be imposed on Mr. P under Section 122(3)(a) for aiding and abetting the offences under Section 122(1)(xx) and 122(1)(x); and

(viii) a penalty of Rs.25,000/- under the CGST Act, 2017 and Rs.25,000/- under the MPGST Act, 2017 should not be imposed on M/s AAA (Mr. Q) under Section 122(3)(a) for aiding and abetting the offence under Section 122(1)(xx).

12. The Noticees are further informed that:

- a written reply to this notice, along with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on the basis of available records, on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated, and each Noticee (or an authorised representative) may appear in person or through counsel;
- the Noticees may, at the time of the reply, request an inspection of the forensic images and the hash value reports, in the presence of the forensic examiner, at the office of the Division;
- attention of Noticee-1 is drawn to the benefit available under Section 74A(9) of the CGST Act, 2017/MPGST Act, 2017, whereby, on payment of the tax, interest and the stated percentage of penalty within the periods specified therein, the proceedings in respect of this notice are deemed to

be concluded; payment does not bar prosecution under Section 132;

- this notice is issued without prejudice to any other action that may be taken against the Noticees or any other person under the CGST Act, 2017/MPGST Act, 2017, or any other law for the time being in force, including Section 132 of the CGST Act, 2017 and the Bharatiya Nyaya Sanhita, 2023.

List of Relied Upon Documents (RUDs):

RUD-1: Authorisations (FORM GST INS-01) dated 05.01.2026 and 16.01.2026 of the Additional Commissioner, CGST, Indore;

RUD-2: Panchnama and seizure list (FORM GST INS-02) dated 06.01.2026, with the hash value of Image A and the scanned Stock Register;

RUD-3: Image A (Tally data folder of 06.01.2026) and extract of the ledger 'Cash Sales - Unbilled' with 1,184 vouchers;

RUD-4: Tally backup dated 05.01.2026 on the seized hard disk; FORM GSTR-1 and FORM GSTR-3B for October to December 2025;

RUD-5: Summons dated 12.01.2026 under Section 70 with acknowledgment of service;

RUD-6: Panchnama dated 17.01.2026 (seizure of the desktop and DVR) with the hash values of Image B and Image C;

RUD-7: Forensic report of Mr. R dated 25.02.2026 with the certificates under Section 145(2) of the CGST Act, 2017 and Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023 (Parts A and B);

RUD-8: The new Stock Register of 198 pages produced on 16.01.2026 and the scan of the original of 06.01.2026;

RUD-9: Remote-access log of M/s AAA dated 14.01.2026, handed over on 22.01.2026;

RUD-10: CCTV footage (Image C) of 14.01.2026 and 15.01.2026 with the extract of time-stamps;

RUD-11: Statement of Mr. P recorded under Section 70 on 21.01.2026;

RUD-12: Statement of Mr. Q recorded under Section 70 on 22.01.2026;

RUD-13: Statement of Mr. Z recorded under Section 70 on 23.01.2026;

RUD-14: WhatsApp chat of 13.01.2026 between Mr. Z and Mr. P, recovered from the seized laptop (with the certificates at RUD-7);

Annexure-A: Month-wise statement of unbilled sales, tax and interest [as per the working in Part B].

(_____)
Deputy Commissioner, CGST
Division - [•], Indore Commissionerate

Copy to: The Additional Commissioner, CGST, Indore (authorising officer); the Commissioner, Indore CGST Commissionerate (for information and for the examination of prosecution under Section 132).

Drafting note (not part of the notice):

- *The addressees, jurisdictional range/officer, F. No./DIN, GSTIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The names (Mr. Z, Mr. P, M/s AAA) are fictional placeholders.*
- ***Teaching point - evidence of tampering and the choice of penalty.*** *The exercise is about (a) how electronic evidence is secured so that tampering is provable (imaging on the spot, hash values, panchnama signed by witnesses, chain of custody, certificate under Section 145(2) of the CGST Act and the certificate under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023, corroboration by CCTV, vendor logs and chats), and (b) which penalty attaches to which act: Section 74A(5)(ii) for the tax, Section 122(1)(xx) for destruction (fixed Rs.10,000/-), Section 122(1)(x)/(xvii) only in the alternative to avoid double counting (Section 75(13)), and Section 122(3)(a) for the abettors. Compare Exercise-32 (non-*

production of books and obstruction - the books are simply not given, nothing is destroyed), Exercise-14 (parallel books - the suppression itself, here only the starting point) and Exercise-49 (prosecution for fake ITC; here prosecution is under clause (f) of Section 132(1), with a six-month tier, and is not compoundable until tax, interest and penalty are paid).

- ***Route choice.*** *The tax is demanded under Section 74A(1) with penalty under Section 74A(5)(ii) (fraud) because the supplies were made in FY 2025-26 and the evidence of suppression is specific: a separate ledger, no invoices, the omission from the returns and the destruction of the ledger after the summons. If the evidence of tampering were absent, the unbilled ledger would still prove the suppression; the tampering adds the penalties under Section 122(1)(xx) and 122(3)(a) and the prosecution cover. Section 67 and 70 powers are used in the sequence search, summons, second search.*
- ***Prosecution and criminal law are not part of the notice.*** *Section 132(1)(f) needs the previous sanction of the Commissioner [Section 132(6)]; the offence is non-cognizable and bailable [Section 132(4)]. Clauses (g), (j) and (k) of Section 132(1) (obstruction, tampering with evidence, failure to supply information) have been omitted with effect from 01.10.2023 (cross-checked from two secondary sources), so the destruction of evidence is now punishable in the criminal law only through the Bharatiya Nyaya Sanhita, 2023 (Sections 238 and 241 - verify before use), apart from clause (f) if the records are falsified or substituted with intent to evade tax. Compounding under Section 138 requires the tax, interest and penalty to be paid first.*
- ***Authority.*** *The central tax demand is Rs.12,33,000/-, which is above Rs.10 lakh and below Rs.1 crore, so, going by the monetary limits of Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore), the notice is issued by the Deputy Commissioner. The draft should be settled by the jurisdictional Division before issue (DRC-01).*
- ***Master Chart discrepancy.*** *Template IX row 5 states that the penalty under Section 122(1)(xx) 'may extend to Rs.25,000'. Section 122(1) prescribes Rs.10,000 or the amount of tax evaded, etc., whichever is higher; the Rs.25,000 ceiling belongs to Section 122(3) and Section 125. The Chart's tier for clause (f) (Template XI) agrees with the Act (Section 132(1)(iv): imprisonment up to six months, or fine, or both).*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 84

Disposal of and tampering with seized goods left in the owner's custody - Section 122(1)(xxi), Section 130 and Section 74A

Exercise 84: Disposal of and tampering with seized goods left in the owner's custody - Section 122(1)(xxi), Section 130 and Section 74A

Situation in Brief:

1. M/s XXX Pvt. Ltd. (the 'Company'), of YYYY, Sector [•], Noida, Gautam Buddh Nagar, Uttar Pradesh, is registered under the CGST Act, 2017 and the UPGST Act, 2017 as a trader of insulated electric cables (HSN 8544, taxable at 18%: 9% central tax and 9% State tax). Mr. Z is its Managing Director and runs the business; Mr. D, the other director, lives abroad and is not in the day-to-day management; Mr. G is the godown-in-charge at the Company's warehouse at YYYY, Greater Noida. On intelligence that the Company was holding stock of cables for which it had no purchase invoices, the Additional Commissioner, CGST, Noida authorised a search under Section 67 of the CGST Act, 2017 (FORM GST INS-01 dated 19.01.2026).

2. **Search and seizure of 20.01.2026.** At the warehouse, in the presence of Mr. Z, Mr. G and two independent witnesses, the officers found 4,000 coils (90 metres each) of 1.5 sq. mm copper cable, valued by the empanelled valuer at Rs.4,500/- per coil (market value, excluding tax), total Rs.1,80,00,000/- (the valuer's report dated 21.01.2026). Mr. Z and Mr. G could not produce any purchase invoice, e-way bill or entry in the books or the stock register for these coils; the suppliers named on the cartons were found to be non-existent at the addresses given. The coils were seized under Section 67(2) as goods liable to confiscation, as goods not accounted for (Section 130(1)(ii)), by an order of seizure in FORM GST INS-02 with an inventory (panchnama dated 20.01.2026).

3. As it was not practicable to shift 4,000 coils to a departmental godown, and as the Company asked to keep them where they were, the officers (a) served on the Company an order not to remove, part with or otherwise deal with the goods, under the first proviso to Section 67(2); (b) sealed the two shutters of the godown with lead seals Nos. 0017 and 0018 and put wire seals on the stacks, in the presence of the witnesses; and (c) obtained, on 20.01.2026, a custody undertaking-cum-bond from the Company, signed by Mr. Z for the Company and by Mr. G as custodian, wherein they undertook to keep the seized goods intact in the godown under the seals, not to break the seals, remove, sell or otherwise dispose of any of the goods, to produce them whenever required, and acknowledged that any breach would attract penalty under Section 122(1)(xxi) and confiscation under Section 130. Keys of the shutters were left with Mr. G, as the Company needed access to the other part of the godown, which was not sealed. No release order was passed under Section 67(6), and no bank guarantee was furnished.

4. A notice under Section 130 in respect of the seized goods was not issued within six months of the seizure (the six months ended on 20.07.2026), because investigation of the supply chain was pending. By an order dated 15.07.2026 the proper officer, for sufficient cause recorded in writing, extended the period by a further six months, i.e. up to 20.01.2027, under the proviso to Section 67(7).

5. **Surprise verification of 20.04.2026 (three months after the seizure).** On an authorisation under Section 67(1) (FORM GST INS-01 dated 19.04.2026), the officers found that (a) lead seal No. 0017 was broken and No. 0018 was missing, and the wire seals on the stacks had been cut and replaced by ordinary plastic ties; (b) only 2,400 coils were in the godown; 1,600 coils (40%) were missing, which was recorded in the panchnama and the inventory comparison signed by Mr. G; and (c) the gate register and the CCTV footage (30 days, copied on 20.04.2026) showed that 1,600 coils left the godown in four trucks on the nights of 17.02.2026, 24.02.2026, 12.03.2026 and 19.03.2026, between 23:00 and 02:30 hours.

6. **Trail of the goods.** Of the 1,600 missing coils, 1,200 coils (700 coils in February and 500 coils in March 2026) were delivered, as the e-way bills, FASTag data and lorry receipts show, to M/s CCC (proprietor Mr. B), Meerut, Uttar Pradesh, against 'fresh invoices' of M/s BBB, a firm of Mrs. Z, wife of Mr. Z, registered at an address which is a residential flat in Noida and has no godown. The invoices carry the rate of Rs.4,000/- per coil plus 18% GST, but the place of dispatch in the e-way bills is the Company's godown, the consignor on the lorry receipts is the Company, and the drivers named Mr. G as the person who loaded the goods. M/s BBB has not filed FORM GSTR-1 or paid any tax for February and March 2026; its registration is being examined for cancellation. The rest, 400 coils (value Rs.18,00,000/-), could not be traced. The sales are not recorded in the books or in the returns of the Company for

February and March 2026. The total sales are:

Month	Coils (No.)	Invoice value @ Rs.4,000/coil (Rs.)	Tax @ 18% (Rs.)
Feb-2026	700	28,00,000	5,04,000
Mar-2026	500	20,00,000	3,60,000
TOTAL	**1200**	**48,00,000**	**8,64,000**

7. Statement of **Mr. G** (22.04.2026, Section 70): on the instructions of Mr. Z, he opened the shutters at night with the keys, cut the seals with a cutter, loaded the trucks with the help of three labourers and sent them out, and put the plastic ties and a replacement lock to hide the cutting; Mr. Z told him 'maal bech do, bank ka paisa dena hai, saal bhar koi nahi dekhega'; he was given Rs.50,000/- as 'bonus'. Statement of **Mr. Z** (24.04.2026): he accepted that the goods were seized, that he signed the custody undertaking and that he knew that the goods were not to be sold; stated that the sale was necessary to pay the bank's instalment and that M/s BBB was used because the Company's GSTIN could not be shown on the invoices for 'seized' goods; he said that he did not know the buyer. Statement of **Mr. T**, a broker of Meerut (27.04.2026): he arranged the sale on a call from Mr. Z, for a commission of Rs.1,000/- per coil, and Mr. Z told him that 'the stock is stuck with the department, take it at Rs.4,000 without any problem'. Statement of **Mr. B** of M/s CCC (29.04.2026): he took delivery of 1,200 coils at night, at the rate Rs.4,000/- per coil, which was 11% below the market rate; Mr. T told him that the goods were 'department wala maal' but 'cleared by invoices'; he accepted that he paid by RTGS to M/s BBB, and cash for the 'transport'; he sold the goods onwards, and the stock is not available.

8. The Company filed its returns for February and March 2026 without disclosing the sales; the bank statement of M/s BBB shows RTGS receipts of Rs.56,64,000/- (the invoice value and tax of 1,200 coils: Rs.4,000/- + Rs.720/- tax = Rs.4,720/- per coil) from M/s CCC, followed by transfers to the Company's current account on the same day, from which the bank instalment was paid. Mr. D, in his reply to the officer's query, stated that he was not aware of the seizure or the sale and has been abroad since December 2025; the passport entries confirm this.

9. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by the Company, Mr. Z, Mr. G and M/s CCC (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against the Company, Mr. Z, Mr. G and M/s CCC (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to the Company, Mr. Z, Mr. G and M/s CCC, calling upon them to show cause as to why action should not be taken against them, while listing the proposed action to be taken against each of them.

(iv) Also prepare the draft Show Cause Notice for issuance to them.

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SUGGESTED SOLUTION

(Search and seizure under Section 67, Determination of Tax Liability under Section 74A, Confiscation under Section 130 and Draft Show Cause Notice - M/s XXX Pvt. Ltd., Noida CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 [UPGST Act] and the Rules made under the two Acts):

I. The Company

1. **Section 122(1)(xxi) of the CGST Act, 2017** - 'disposes of or tampers with any goods that have been detained, seized or attached under this Act': 1,600 coils out of the 4,000 coils seized on 20.01.2026 were removed and disposed of, and the seals were broken and replaced, in breach of the order under the first proviso to Section 67(2) and of the custody undertaking. The goods remained 'seized goods' in the custody of the owner; the custody undertaking does not make them free goods, and no release was granted under Section 67(6).
2. **Section 9(1) read with Sections 15, 31(1), 37(1) and 39(1)** - supply of 1,200 coils at Rs.4,000/- per coil (taxable value Rs.48,00,000/-) in February and March 2026 without invoice from the Company (the invoices of M/s BBB being not the invoices of the supplier), without reporting in the returns and without payment of tax. The supplier in law is the Company, as the owner of the goods who made the supply through its godown, staff and trucks, whatever name the invoices bear.
3. **Section 122(1)(xviii) and Section 130(1)(ii)** - the Company stored, and did not account for, 4,000 coils on which tax is payable, which the Company has reason to believe to be liable to confiscation; the goods are liable to confiscation under Section 130(1)(ii) and the person is liable to penalty under Section 122 [Section 130(1)].

II. Mr. Z (Managing Director), Mr. G (godown-in-charge) and M/s CCC (buyer)

4. **Section 122(3)(a)** - Mr. Z decided and ordered the disposal, in breach of his own undertaking, and arranged the invoices of M/s BBB; Mr. G broke the seals, loaded the trucks and removed the goods at night. Both aided and abetted the offence under Section 122(1)(xxi). (Mr. Z and Mr. G are persons who are liable as abettors, since the offence is that of the Company, the registered person.)
5. **Section 122(3)(b)** - M/s CCC (Mr. B) acquired possession of, and dealt with, 1,200 coils which it knew or had reason to believe to be liable to confiscation: delivery at night, a price 11% below the market, a broker who told it that the goods were 'department wala maal', and payment partly in cash. The goods were liable to confiscation because they were seized goods not accounted for.

Note: *Considered and not invoked: (a) Section 129 - the goods were not detained in transit when they were found missing; the proceeding for transit goods (Exercises 23-27) does not apply to goods seized from a godown; (b) Section 122(1)(xix) - the invoices were issued in M/s BBB's own GSTIN, so the clause on use of another person's registration number is not attracted; the invoices are false only in the identity of the supplier; (c) Mr. D - a director on record, abroad, no part in the disposal; the passport entries and the statement exclude him, so no penalty is proposed on him (the proceedings against a director need evidence of his own participation or knowledge); (d) Mr. T (broker) - a statement witness who acted as a commission agent on the representation of Mr. Z; if the evidence of his knowledge grows stronger, he can be added under Section 122(3)(b) by a supplementary notice; (e) M/s BBB and Mrs. Z - to be dealt with separately for the tax collected and not paid [Section 76] and the cancellation of registration; (f) Section 125 - not used as a specific clause applies.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the Noticees to the following action under the CGST Act, 2017 (read with the UPGST Act, 2017). The point of the exercise is to match each category of goods with the proceeding which fits it:

Goods (coils)	Value (Rs.)	Proceeding	Reason
1,200 coils sold to M/s CCC	48,00,000 (sale value)	Tax and penalty under Section 74A on the Company; 122(3)(b) on the buyer	The supply has taken place; the goods are no longer available, so they cannot be confiscated and no fine in lieu can be imposed; the sales invoices prove the supply
400 coils untraced	18,00,000 (market value)	Penalty under Section 122(1)(xxi) only; no tax demanded now	There is no evidence of supply (no invoice, no buyer); tax cannot be demanded on goods which are merely missing. The investigation continues; a supplementary notice may follow
2,400 coils still in the godown	1,08,00,000 (market value, ex-tax)	Confiscation under Section 130(1)(ii), with the option of fine in lieu under Section 130(2)	The goods exist and are liable to confiscation as goods not accounted for; no tax is demanded on them because they have not been supplied (Section 130(3) keeps the tax liable on redemption)

1. Demand of tax - under **Section 74A(1)** on the supply of 1,200 coils in February and March 2026, i.e. in FY 2025-26 [Section 74A(12)], tax Rs.8,64,000/- (central tax Rs.4,32,000/- and UPGST Rs.4,32,000/-). The notice can be issued up to 30.06.2030 [Section 74A(2)]. The taxable value is the rate charged in the invoices (Rs.4,000/- per coil), the invoices being the best evidence of the transaction value under Section 15; no tax is added to the invoice value since the 18% was charged separately by M/s BBB. The demand is on the Company as the supplier; the tax collected by M/s BBB is separately recoverable from it under Section 76 and the department will not recover the same tax twice.
2. Interest - under **Section 50(1)** at 18% per annum on the tax, from 21.03.2026 for February 2026 and from 21.04.2026 for March 2026 till payment; up to 30.11.2026, Rs.1,03,148/- (Rs.51,574/- each under the CGST and UPGST Acts), as per the working below.
3. Penalty on the Company for the tax - **Section 74A(5)(ii)**, equal to the tax, Rs.8,64,000/- (Rs.4,32,000/- each), as the non-payment is by suppression: the sales were made at night, from sealed goods, with invoices of a firm without a godown, and kept out of the books and the returns. The concessions of **Section 74A(9)** (15%, 25% and 50%) are available.
4. Penalty on the Company for the disposal - **Section 122(1)(xxi)**: Rs.10,000/- under each Act, total Rs.20,000/-. The clause carries no tax measure other than the fixed Rs.10,000/- here, since the tax on the sold goods is already covered by Section 74A(5)(ii); the disposal is a different act (breaking the seals and removing seized goods) from the omission to pay tax, and Section 75(13) is respected by limiting the amount to the fixed sum. The same penalty covers the 400 untraced coils, which are part of the 1,600 coils removed in the four night movements. In addition, Section 122(1)(xviii), through Section 130(1), is proposed at Rs.10,000/- under each Act for storing the unaccounted goods (total Rs.20,000/-).
5. Confiscation of the remaining goods - the 2,400 coils (market value Rs.1,08,00,000/- excluding tax) are liable to confiscation under **Section 130(1)(ii)**; they vest in the Government on confiscation [Section 130(5)]. The adjudicating officer must give the owner an **option to pay a fine in lieu** [Section 130(2)], subject to the provisos: the fine cannot exceed the market value less the tax chargeable thereon, i.e. market value including tax Rs.1,27,44,000/- less tax chargeable Rs.19,44,000/- = **Rs.1,08,00,000/-** (first proviso); and the aggregate of fine and penalty cannot be less than the penalty leviable under Section 129(1), here 100% of the tax payable, Rs.19,44,000/- (second proviso, taking the 'owner comes forward' penalty of Section 129(1)(a)). The fine is to be fixed by the adjudicating authority after hearing [Section 130(4)]; on payment the owner remains liable for the tax, penalty and charges on the goods [Section 130(3)]. The third proviso of Section 130(2) concerns the fine for conveyances let on hire, and is not relevant here.
6. Penalties on Mr. Z, Mr. G and M/s CCC - **Section 122(3)(a)** on Mr. Z and Mr. G, and **Section 122(3)(b)** on

M/s CCC: penalty which may extend to Rs.25,000/- on each, i.e. Rs.25,000/- under each Act. The ceiling is used for Mr. Z (who ordered) and Mr. G (who broke the seals); for M/s CCC, because the knowledge is established by the circumstances and the statements.

7. How the offence is proved - (a) the order of seizure and inventory (INS-02) and the order under the first proviso to Section 67(2) fix what was seized and prohibit its removal; (b) the custody undertaking-cum-bond, signed by Mr. Z and Mr. G, proves that they knew that the goods were in custody and that the sale was forbidden, and shuts out the defence of 'ignorance'; (c) the panchnama of 20.04.2026 with the seal numbers and the count proves the shortage; (d) the gate register, CCTV, e-way bills, FASTag data and lorry receipts prove the removal; (e) the invoices of M/s BBB and the RTGS trail prove the sale; and (f) the statements prove the knowledge. The undertaking is not a statutory bond: the statutory bond for provisional release is the bond in FORM GST INS-04 with a bank guarantee of the tax and penalty [Section 67(6) and Rule 140], and if the goods had been so released, failure to produce them would have led to encashment of the security [Rule 140(2)]. Here there was no release, so the goods stay 'seized goods' within Section 122(1)(xxi) and Section 130.

8. Time-limit for the notice on seized goods - if no notice is given within six months of the seizure the goods must be returned to the person from whom they were seized [Section 67(7)], unless the proper officer extends the period for sufficient cause up to a further six months (extension order dated 15.07.2026, valid up to 20.01.2027). The notice must therefore be issued, and a copy of the extension order kept on record, before 20.01.2027.

9. Provisional attachment and recovery - the current account and other bank accounts of the Company may be attached under **Section 83** to protect the revenue of Rs.18,31,148/- (tax, interest and penalty) and the fine in lieu, as proceedings are pending (search under Chapter XIV from 20.01.2026), for a period of one year [Section 83(2)]. Recovery follows under Sections 78 and 79.

10. Prosecution (not part of the notice) - Section 132(1)(h) (deals with goods known to be liable to confiscation) and Section 132(1)(l) (abetment) were examined for the Company, Mr. Z, Mr. G and M/s CCC. The tax involved (Rs.8,64,000/-) is below Rs.2 crore, the lowest amount at which an offence under clause (h) or (l) falls in any punishment tier of Section 132(1) (tiers (i) and (ii); tier (iii), for Rs.1 crore to Rs.2 crore, is confined to clause (b)), so no prosecution is proposed. The breach of the seals and the removal of goods from custody may also be examined under the Bharatiya Nyaya Sanhita, 2023 (the section is to be identified before a complaint is made).

Illustrative working of the tax and interest proposed to be demanded for the goods sold off the books (central tax and UPGST each @ 9%; interest @ 18% from the day after the due date of FORM GSTR-3B to 30.11.2026):

Month	Coils	Taxable value (Rs.)	Total tax (Rs.)	Each Act (Rs.)	Due date of GSTR-3B	Days	Interest, both Acts (Rs.)
Feb-2026	700	28,00,000	5,04,000	2,52,000	20.03.2026	255	63,380
Mar-2026	500	20,00,000	3,60,000	1,80,000	20.04.2026	224	39,768
TOTAL	**1200**	**48,00,000**	**8,64,000**	**4,32,000**			**1,03,148**

Basis: *Interest is worked per head as tax x 18% x days / 365 (February 2026: Rs.2,52,000/- each Act for 255 days; March 2026: Rs.1,80,000/- each Act for 224 days). The fine in lieu of confiscation, the penalties and the 74A(9) concessions are on top of these figures. Penalty total proposed: Rs.10,54,000/- (Section 74A(5)(ii) Rs.8,64,000/-; Section 122(1)(xxi) Rs.20,000/-; Section 122(1)(xviii) Rs.20,000/-; Section 122(3) on three persons Rs.1,50,000/-).*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Pvt. Ltd., through its Managing Director; Mr. Z, Managing Director; Mr. G, Godown-in-charge; and M/s CCC, through its proprietor Mr. B, are hereby called upon to show cause in writing to the

Additional Commissioner, CGST, Noida Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the 1,200 coils of insulated cable (taxable value Rs.48,00,000/-) supplied from the godown at YYYY, Greater Noida to M/s CCC, Meerut in February and March 2026 against the invoices of M/s BBB should not be held to be taxable supplies made by the Company without invoice, return and payment of tax, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) of the CGST Act, 2017/UPGST Act, 2017;

(ii) an amount of Rs.4,32,000/- (Central tax) and Rs.4,32,000/- (Uttar Pradesh State tax), total Rs.8,64,000/- (Rupees Eight Lakh Sixty-Four Thousand only), as detailed in Annexure-A, should not be demanded and recovered from the Company under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the UPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/UPGST Act, 2017 should not be charged and recovered from the Company on the tax at (ii) above, from 21.03.2026 (on Rs.5,04,000/-) and 21.04.2026 (on Rs.3,60,000/-) till payment;

(iv) a penalty of Rs.4,32,000/- (Central tax) and Rs.4,32,000/- (Uttar Pradesh State tax), total Rs.8,64,000/-, being equal to the tax due, should not be imposed on the Company under Section 74A(5)(ii) of the CGST Act, 2017/UPGST Act, 2017 (without prejudice to Section 74A(9));

(v) a penalty of Rs.10,000/- under the CGST Act, 2017 and Rs.10,000/- under the UPGST Act, 2017 should not be imposed on the Company under Section 122(1)(xxi) for disposing of and tampering with the goods seized on 20.01.2026 (1,600 coils, of which 1,200 coils were sold and 400 coils are untraced), subject to Section 75(13) of the CGST Act, 2017;

(vi) the 2,400 coils of insulated cable of the market value of Rs.1,08,00,000/- (excluding tax) lying in the godown under seizure should not be confiscated under Section 130(1)(ii) of the CGST Act, 2017/UPGST Act, 2017, and why, if the Company is given the option of paying a fine in lieu of confiscation under Section 130(2), a fine not exceeding Rs.1,08,00,000/- (being the market value less the tax chargeable), and being not less, with the penalty, than Rs.19,44,000/-, should not be imposed, the Company remaining liable to the tax, penalty and charges on the goods under Section 130(3);

(vii) a penalty of Rs.10,000/- under each Act should not be imposed on the Company under Section 122(1)(xviii) read with Section 130(1) for storing the said goods liable to confiscation;

(viii) a penalty of Rs.25,000/- under each Act should not be imposed on Mr. Z and on Mr. G, each, under Section 122(3)(a) of the CGST Act, 2017/UPGST Act, 2017 for aiding and abetting the offence under Section 122(1)(xxi); and

(ix) a penalty of Rs.25,000/- under each Act should not be imposed on M/s CCC (Mr. B) under Section 122(3)(b) of the CGST Act, 2017/UPGST Act, 2017 for acquiring possession of and dealing with 1,200 coils which it knew or had reason to believe to be liable to confiscation.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-NOIDA

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Additional Commissioner, CGST, Noida Commissionerate, Uttar Pradesh

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Sections 74A, 122 and 130 of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017; summary in FORM GST DRC-01)

To,
1. M/s XXX Pvt. Ltd., YYYY, Noida, Uttar Pradesh, through its Managing Director (GSTIN: [●]);
2. Mr. Z, Managing Director of M/s XXX Pvt. Ltd., residing at YYYY, Noida;
3. Mr. G, Godown-in-charge, M/s XXX Pvt. Ltd., YYYY, Greater Noida;
4. M/s CCC, through its proprietor Mr. B, YYYY, Meerut, Uttar Pradesh (GSTIN: [●]).

(hereinafter referred to as 'the Company', 'Mr. Z', 'Mr. G' and 'M/s CCC' respectively, and collectively as 'the Noticees')

WHEREAS the Company is registered under the CGST Act, 2017 and the UPGST Act, 2017 as a trader of insulated electric cables (HSN 8544, taxable at 18%), and maintains a warehouse at YYYY, Greater Noida;

2. AND WHEREAS on the authorisation of the Additional Commissioner, CGST, Noida dated 19.01.2026 (RUD-1), the warehouse was searched under Section 67 of the CGST Act, 2017 on 20.01.2026, and 4,000 coils of insulated cable of the market value of Rs.1,80,00,000/- (excluding tax) (valuer's report, RUD-3), for which no purchase invoice, e-way bill or entry in the books could be produced, were seized as goods liable to confiscation under Section 130(1)(ii), by an order in FORM GST INS-02 with an inventory (panchnama, RUD-2);

3. AND WHEREAS, as it was not practicable to shift the goods, the officers served on the Company an order under the first proviso to Section 67(2) not to remove, part with or otherwise deal with the goods, sealed the godown with lead seals Nos. 0017 and 0018 and the stacks with wire seals, and obtained a custody undertaking-cum-bond dated 20.01.2026, signed by Mr. Z for the Company and by Mr. G as custodian, wherein they undertook to keep the goods intact under seal, not to break the seals or dispose of any goods, to produce them on demand, and acknowledged that any breach would attract Section 122(1)(xxi) and Section 130 (RUD-4). The period of six months under Section 67(7) was extended by the proper officer up to 20.01.2027 by an order dated 15.07.2026 (RUD-5);

4. AND WHEREAS in a verification under Section 67(1) on 20.04.2026 (authorisation dated 19.04.2026) the officers found that the seals had been broken and replaced by plastic ties, that only 2,400 coils were in the godown and that 1,600 coils (40%) were missing, as recorded in the panchnama and the inventory comparison signed by Mr. G (RUD-6). The gate register and the CCTV footage (RUD-7) show that the 1,600 coils left the godown in four trucks between 23:00 and 02:30 hours on 17.02.2026, 24.02.2026, 12.03.2026 and 19.03.2026;

5. AND WHEREAS the e-way bills, FASTag data and lorry receipts (RUD-8) show that 1,200 coils (700 coils in February 2026 and 500 coils in March 2026) were delivered to M/s CCC, Meerut against invoices of M/s BBB, a firm which has no godown at the place of dispatch shown, while the place of dispatch is the Company's godown, the consignor on the lorry receipts is the Company and the drivers have named Mr. G as the person who loaded the goods. The invoices (RUD-9) are at the rate of Rs.4,000/- per coil plus 18% GST, aggregating Rs.48,00,000/- plus tax of Rs.8,64,000/-. M/s BBB has not filed FORM GSTR-1 or paid any tax for the two months; payment of Rs.56,64,000/- was made by M/s CCC by RTGS to M/s BBB, which was transferred to the current account of the Company on the same day (RUD-10). The sales are not recorded in the books or in the returns of the Company (RUD-11). The remaining 400 coils (value Rs.18,00,000/-) are untraced;

6. AND WHEREAS in his statement dated 22.04.2026 (RUD-12) Mr. G admitted that on the instructions of Mr. Z he cut the seals at night, loaded the trucks and replaced the seals with plastic ties, for Rs.50,000/- 'bonus'. In his statement dated 24.04.2026 (RUD-13) Mr. Z accepted that he signed the custody undertaking, knew that the goods were not to be sold, ordered the sale to pay the bank's instalment and used M/s BBB because the Company's GSTIN could not be shown for the seized goods. In his statement dated 27.04.2026 (RUD-14) Mr. T, a broker, stated that he arranged the sale on a call from Mr. Z and told the buyer that the stock was 'stuck with the department'. In his statement dated 29.04.2026 (RUD-15) Mr. B of M/s CCC accepted that he took delivery of 1,200 coils at night, at a price 11% below the market rate, was told by Mr. T that the goods were 'department wala maal', paid by RTGS and partly in cash, and sold the goods onwards;

7. AND WHEREAS it appears that the Company made taxable supplies of 1,200 coils, valued at Rs.48,00,000/-, without invoices of its own, returns and payment of tax, in contravention of Sections 9(1), 31(1), 37(1) and 39(1); that the tax payable is Rs.4,32,000/- each under the CGST Act and the UPGST Act, total Rs.8,64,000/-; and that the non-payment was by suppression of facts with intent to evade tax, as the goods were seized goods, were removed from sealed custody at night and were invoiced in the name of a firm without a godown, so as to attract Section 74A(5)(ii);

8. AND WHEREAS it appears that the Company has disposed of and tampered with goods seized under the Act, contrary to Section 122(1)(xxi); that the 2,400 coils remaining in the godown, which were not accounted for, are liable to confiscation under Section 130(1)(ii); that the Company stored the goods which were liable to confiscation, attracting Section 122(1)(xviii); that Mr. Z and Mr. G aided and abetted the offence under Section 122(1)(xxi), attracting Section 122(3)(a); and that M/s CCC acquired possession of and dealt with goods which it knew or had reason to believe to be liable to confiscation, attracting Section 122(3)(b);

9. AND WHEREAS the matter of prosecution under Section 132 and of any action under any other law is not covered by this notice;

NOW, THEREFORE

the Noticees are hereby called upon to show cause in writing to the Additional Commissioner, CGST, Noida Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the 1,200 coils of insulated cable (taxable value Rs.48,00,000/-) supplied from the godown at YYYY, Greater Noida to M/s CCC, Meerut in February and March 2026 against the invoices of M/s BBB should not be held to be taxable supplies made by the Company without invoice, return and payment of tax, in contravention of Sections 9(1), 31(1), 37(1) and 39(1) of the CGST Act, 2017/UPGST Act, 2017;

(ii) an amount of Rs.4,32,000/- (Central tax) and Rs.4,32,000/- (Uttar Pradesh State tax), total Rs.8,64,000/- (Rupees Eight Lakh Sixty-Four Thousand only), as detailed in Annexure-A, should not be demanded and recovered from the Company under Section 74A(1) of the CGST Act, 2017 and the corresponding provisions of the UPGST Act, 2017;

(iii) interest at the applicable rate under Section 50(1) of the CGST Act, 2017/UPGST Act, 2017 should not be charged and recovered from the Company on the tax at (ii) above, from 21.03.2026 (on Rs.5,04,000/-) and 21.04.2026 (on Rs.3,60,000/-) till payment;

(iv) a penalty of Rs.4,32,000/- (Central tax) and Rs.4,32,000/- (Uttar Pradesh State tax), total Rs.8,64,000/-, being equal to the tax due, should not be imposed on the Company under Section 74A(5)(ii) of the CGST Act, 2017/UPGST Act, 2017 (without prejudice to Section 74A(9));

(v) a penalty of Rs.10,000/- under the CGST Act, 2017 and Rs.10,000/- under the UPGST Act, 2017 should not be imposed on the Company under Section 122(1)(xxi) for disposing of and tampering with the goods seized on 20.01.2026 (1,600 coils, of which 1,200 coils were sold and 400 coils are untraced), subject to Section 75(13) of the CGST Act, 2017;

(vi) the 2,400 coils of insulated cable of the market value of Rs.1,08,00,000/- (excluding tax) lying in the godown under seizure should not be confiscated under Section 130(1)(ii) of the CGST Act, 2017/UPGST Act, 2017, and why, if the Company is given the option of paying a fine in lieu of

confiscation under Section 130(2), a fine not exceeding Rs.1,08,00,000/- (being the market value less the tax chargeable), and being not less, with the penalty, than Rs.19,44,000/-, should not be imposed, the Company remaining liable to the tax, penalty and charges on the goods under Section 130(3);

(vii) a penalty of Rs.10,000/- under each Act should not be imposed on the Company under Section 122(1)(xviii) read with Section 130(1) for storing the said goods liable to confiscation;

(viii) a penalty of Rs.25,000/- under each Act should not be imposed on Mr. Z and on Mr. G, each, under Section 122(3)(a) of the CGST Act, 2017/UPGST Act, 2017 for aiding and abetting the offence under Section 122(1)(xxi); and

(ix) a penalty of Rs.25,000/- under each Act should not be imposed on M/s CCC (Mr. B) under Section 122(3)(b) of the CGST Act, 2017/UPGST Act, 2017 for acquiring possession of and dealing with 1,200 coils which it knew or had reason to believe to be liable to confiscation.

10. The Noticees are further informed that:

- a written reply to this notice, with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on merits;
- a personal hearing will be granted before any order of confiscation, penalty or demand [Section 130(4) and Section 75], on a date to be separately intimated;
- the goods at (vi) remain under seizure, and shall be kept in the godown under seal and shall not be removed; any further breach will be dealt with in accordance with law;
- attention of the Company is drawn to the benefit of Section 74A(9) of the CGST Act, 2017/UPGST Act, 2017 in respect of the demand at (ii) to (iv), on payment of the tax, interest and the stated percentage of penalty within the periods specified therein;
- this notice is issued without prejudice to any other action under the CGST Act, 2017/UPGST Act, 2017 or any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: Authorisation (FORM GST INS-01) dated 19.01.2026 and 19.04.2026;

RUD-2: Panchnama, inventory and order of seizure (FORM GST INS-02) dated 20.01.2026, with the order under the first proviso to Section 67(2);

RUD-3: Valuer's report dated 21.01.2026;

RUD-4: Custody undertaking-cum-bond dated 20.01.2026 signed by Mr. Z and Mr. G, with the seal register;

RUD-5: Order dated 15.07.2026 extending the period under Section 67(7);

RUD-6: Panchnama of verification dated 20.04.2026 with the inventory comparison and photographs of the seals;

RUD-7: Gate register and CCTV footage of the godown (copied on 20.04.2026), with the certificate under Section 145(2) of the CGST Act, 2017 and the certificate under Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023;

RUD-8: E-way bills, FASTag data and lorry receipts of the four trucks;

RUD-9: Invoices of M/s BBB to M/s CCC for February and March 2026;

RUD-10: Bank statements of M/s CCC, M/s BBB and the Company (RTGS trail);

RUD-11: FORM GSTR-1 and FORM GSTR-3B of the Company for February and March 2026, and the GST registration and return record of M/s BBB;

RUD-12 to RUD-15: Statements under Section 70 of Mr. G (22.04.2026), Mr. Z (24.04.2026), Mr. T (27.04.2026) and Mr. B (29.04.2026);

Annexure-A: Month-wise statement of sales, tax and interest [as per the working in Part B].

(_____)
Additional Commissioner, CGST
Noida Commissionerate

Copy to: The Commissioner, Noida CGST Commissionerate, for information.

Drafting note (not part of the notice):

- *The addressees, GSTIN, jurisdictional officer, F. No./DIN, seal numbers and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The names (Mr. Z, Mr. G, M/s BBB, M/s CCC) are fictional placeholders.*
- ***Teaching point - seized goods, custody and the two proceedings.*** *The goods were seized and left in the owner's custody under a custody undertaking. If the owner sells them, three different things happen: (a) Section 122(1)(xxi) penalty on the offender for disposing of or tampering with seized goods; (b) Section 130 confiscation (with the option of fine in lieu) for the goods which are still there and liable to confiscation; and (c) demand of tax under Section 74A for the goods which have been supplied. The seizure memo, the order under the proviso to Section 67(2) and the custody undertaking prove that the goods were seized and that the owner knew it. Compare Exercises 23-27 (goods in transit, Sections 129/130, where the detention is on the road and the penalty is a payment for release) and Exercise 26 (excess stock at the godown, where the question is whether the stock is accounted for - here that question is the starting point and is not examined again).*
- ***The custody undertaking is not a statutory form.*** *The Act and Rules provide (i) an order not to remove or deal with goods where seizure is not practicable [proviso to Section 67(2)], and (ii) provisional release against a bond in FORM GST INS-04 and a bank guarantee [Section 67(6), Rule 140]. A custody undertaking of the 'supratnama' type is an administrative device; the notice relies on it only as proof of knowledge. If the Department prefers the statutory route, it should obtain a release order with INS-04 and the bank guarantee, so that on breach the security can be encashed [Rule 140(2)]; whether such released goods continue to be 'seized' for Section 122(1)(xxi) is doubtful and should be avoided by keeping the goods under seal.*
- ***What not to charge.*** *Do not confiscate goods which are no longer there, do not demand tax on the 400 missing coils without evidence of supply, and do not charge a director who was not involved (Mr. D). Section 122(1)(xxi) and Section 74A(5)(ii) are both used on the Company, but the Section 122(1)(xxi) penalty is kept at the fixed amount to respect Section 75(13). The Master Chart (Template IX row 6) says the penalty 'may extend to Rs.25,000'; the Act (Section 122(1)) prescribes Rs.10,000/- or the amount of tax evaded, etc., whichever is higher, and the Act is followed.*
- ***Authority.*** *The central tax demand (Rs.4,32,000/-) is within the Superintendent's limit under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). However, the notice also proposes confiscation of goods of the value of Rs.1,08,00,000/- and a fine in lieu of up to Rs.1,08,00,000/-, and the notice is therefore issued by the Additional Commissioner on the footing that the amount of the whole proceeding (tax, fine and penalty) exceeds Rs.1 crore; the monetary limits applicable to Section 130 notices are to be verified in the Circular before the draft is finalised.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 85

Failure to register packing machines used in manufacture of pan masala under the special procedure of Section 148 - Section 122A

Exercise 85: Failure to register packing machines used in manufacture of pan masala under the special procedure of Section 148 - Section 122A

Situation in Brief:

1. M/s XXX Pan Products Pvt. Ltd. (the 'Company'), of YYYY, Industrial Area, Panki, Kanpur Nagar, Uttar Pradesh, is registered under the CGST Act, 2017 and the UPGST Act, 2017 and manufactures pan masala (HSN 2106 90 20), a good covered by the Schedule to Notification No. 04/2024-Central Tax dated 05.01.2024 (special procedure for registration of packing machines and monthly statement), issued under Section 148 of the CGST Act, 2017 and in force from 15.05.2024. Mr. Z is the Managing Director; Mr. D, the whole-time director, runs the factory; Mr. F is the factory manager. The Company filed FORM GST SRM-I on 12.06.2024, declaring nine filling and packing machines (with the certificate of a Chartered Engineer in FORM GST SRM-III), got nine unique machine registration numbers, and has filed the monthly statement in FORM GST SRM-II every month, showing production by those nine machines only.

2. Analysis of the electricity data and the Company's purchase ledger showed that the sanctioned electrical load of the factory was raised from 750 kVA to 1,000 kVA in September 2025, and that the Company had paid Rs.72,50,000/- (plus GST) in August and October 2025 to M/s MMM, a trader in packing machinery at Kanpur whose proprietor, Mr. S, is the brother-in-law of Mr. Z, for goods described in the invoices as 'machinery spares and accessories'. On the authorisation of the Additional Commissioner, CGST, Kanpur dated 17.12.2025 under Section 67(1) and (2) of the CGST Act, 2017 (FORM GST INS-01), the factory was inspected on 18.12.2025 in the presence of Mr. D and two independent witnesses, and a summons dated 18.12.2025 under Section 70 was issued to Mr. D.

3. **Inspection of 18.12.2025.** The panchnama records that (a) the factory runs two shifts and has fourteen fully automatic multi-track filling and packing machines (make 'PK-8', 8 tracks each), nine in Hall A, with metal plates showing the machine registration numbers issued on the GST portal, and five in a separate Hall B, with no plates and with the portal numbers blank; (b) the five machines in Hall B were running, with the hoppers loaded and the pouches being packed into cartons bearing the Company's brand; (c) the nameplates of the five machines show the serial numbers shown in the table below; and (d) a separate register of production, 'Hall B production book', for September to December 2025 and the stock of cartons of the five machines were found, and the production book was taken in custody. The portal record, compared in the presence of the witnesses, showed that only the nine machines of Hall A are registered.

Machine	Serial no.	Invoice of M/s MMM	Installed on	Value (Rs., ex-tax)
M-10	PK8-2507-0311	05.08.2025	12.08.2025	14,50,000
M-11	PK8-2507-0312	05.08.2025	12.08.2025	14,50,000
M-12	PK8-2507-0313	05.08.2025	12.08.2025	14,50,000
M-13	PK8-2509-0402	14.10.2025	20.10.2025	14,50,000
M-14	PK8-2509-0403	14.10.2025	20.10.2025	14,50,000
TOTAL				**72,50,000**

4. As the five machines weigh over a tonne each and the Company needed the nine registered machines to run, the officers, on the same day, (a) seized the five machines under Section 67(2) of the CGST Act, 2017 read with Section 122A(2), which makes every unregistered machine liable to seizure and confiscation (order of seizure in FORM GST INS-02 with the machine-wise inventory); (b) sealed each machine in Hall B with lead seals and served on the Company an order under the first proviso to Section 67(2) not to remove, use, part with or otherwise deal with the machines; and (c) left the machines in the custody of Mr. F, under a custody undertaking. Production in Hall B was stopped. The six-month period under Section 67(7) for giving a notice in respect of the seized machines would have ended on 18.06.2026; by an order dated 12.06.2026 the proper officer extended it, for sufficient cause, up to 18.12.2026.

5. Statements under Section 70. **Mr. D** (19.12.2025): he oversees production and purchases; the five machines were bought to raise the output, the registration was 'not done' since 'registration brings the department into the factory and shows the real capacity'; he knew of the 24-hour rule in the notification and that the monthly statement had to cover all machines; the Hall B production book was kept so that the output could be tracked 'internally'; the invoices were got made in the name of 'machinery spares' by Mr. S 'to avoid questions from the bank and the department'. **Mr. F** (20.12.2025): he installed the machines on the dates shown and ran them on two shifts. **Mr. S of M/s MMM** (22.12.2025): complete machines were sold; he described them as 'spares' on the request of Mr. D; he did not know that the machines have to be registered with the department by the user, and nobody told him that the supplier had any duty.

6. The monthly statements in FORM GST SRM-II of the Company for August to November 2025 show production on the nine machines of Hall A only. The Hall B production book shows production on the five machines on 78 days between 13.08.2025 and 17.12.2025; the quantity is under quantification and is not part of this exercise. The five machines were not entered in Table 6, Part B of FORM GST SRM-I within 24 hours of installation or at all.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by the Company (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against the Company, the directors and the supplier of the machines (under heading Consequences of Contravention of legal Provisions), and compute the penalty.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to the Company, calling upon it to show cause as to why action should not be taken against it, while listing the proposed action.

(iv) Also prepare the draft Show Cause Notice for issuance to the Company.

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SUGGESTED SOLUTION

(Inspection and seizure under Section 67, penalty under Section 122A, and Draft Show Cause Notice - M/s XXX Pan Products Pvt. Ltd., Kanpur CGST Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions of law stand contravened (in each case read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 [UPGST Act]):

1. **Section 148 of the CGST Act, 2017 read with paragraph 1(3) of Notification No. 04/2024-Central Tax dated 05.01.2024** - the Company, a registered person engaged in manufacturing pan masala, a Scheduled good, had to report every additional filling and packing machine on the common portal, in FORM GST SRM-I (Table 6, Part B), within 24 hours of installation; the five machines M-10 to M-14, installed on 12.08.2025 and 20.10.2025, were never reported. Section 148 is the enabling provision: it empowers the Government, on the recommendations of the Council, to notify the special procedure to be followed by a class of registered persons, including for registration; the notification has the force of law under it.
2. **Paragraph 2 of the same notification** - the monthly statement in FORM GST SRM-II, due by the 10th of the following month, was to cover the inputs, production by brand and machine, and electricity consumption of all the machines; the statements for August to November 2025 show nine machines only. This is a contravention which is, in effect, a consequence of the first and is not separately penalised (see B-4).
3. **Section 122A(1) of the CGST Act, 2017** - being a person engaged in manufacture of goods in respect of which a special procedure relating to registration of machines has been notified under Section 148, the Company acted in contravention of that procedure for five machines. The section is the specific penal provision.

Note: *(a) The Master Chart (Template X row 1) cites Notification No. 30/2023-Central Tax dated 31.07.2023. That notification was rescinded by Notification No. 03/2024-Central Tax dated 05.01.2024 with effect from 01.01.2024 (that is, before any machine registration became due under it), and the special procedure for the registration of machines now in force is in Notification No. 04/2024-Central Tax dated 05.01.2024 (effective originally from 01.04.2024, and deferred to 15.05.2024 by Notification No. 08/2024-Central Tax dated 10.04.2024). The forms are FORM GST SRM-I (machines), SRM-II (monthly statement) and SRM-III (Chartered Engineer's certificate), not the SRM-IIA/IIB/IIIA/IIIB/IV of the earlier notification. The Act, and the notification actually in force, are followed. (b) The Notification does not impose any duty on the supplier, seller or transporter of machines, and no provision of Section 122A is addressed to any person other than the manufacturer.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions at (A) above expose the Company to the following action under the CGST Act, 2017 (read with the UPGST Act, 2017):

1. Penalty - **Section 122A(1)** (inserted by Section 13 of the Finance Act, 2024 and brought into force on 01.10.2024 by Notification No. 16/2024-Central Tax dated 06.08.2024): 'notwithstanding anything contained in this Act', a penalty of one lakh rupees for every machine not so registered, in addition to any penalty under Chapter XV or other provisions of Chapter XIX. The machines were installed in August and October 2025, after 01.10.2024, so the section applies to all five. It is a fixed amount per machine, not a percentage and not related to the days of default: 5 machines x Rs.1,00,000/- = Rs.5,00,000/- under the CGST Act (and the same amount, Rs.5,00,000/-, under the corresponding provision of the UPGST Act, if the State Act has the corresponding Section 122A; total Rs.10,00,000/-).
2. Seizure and confiscation - **Section 122A(2)**: every machine not so registered is liable to seizure and confiscation. The proviso saves the machine from confiscation if (a) the penalty is paid and (b) the machine is registered under the special procedure within three days of receipt of the communication of the order of penalty. This is the 'released on payment of penalty and registration' stated in the Master Chart. The machines were seized under Section 67(2) on 18.12.2025 as goods liable to confiscation; the notice must be given within six months (Section 67(7)), here extended to 18.12.2026. The notice

proposes confiscation of the machines (value Rs.72,50,000/-) subject to the proviso: the order on the penalty will be the trigger for the three days, so the order should be clear that the machines will be released on payment and on registration in FORM GST SRM-I with the Chartered Engineer's certificate (FORM GST SRM-III), failing which they stand confiscated.

3. Procedure - the penalty-only notice. Section 122A is not among the provisions in which the demand and the penalty are determined together (Sections 73, 74, 74A); no tax is demanded in this notice, and the penalty is imposed by an order after giving a reasonable opportunity of being heard, as under **Section 127** (power to impose penalty in certain cases, where the penalty is not covered by proceedings under Sections 62, 63, 64, 73, 74, 74A, 129 or 130). The notice is in FORM GST DRC-01. There is no time-limit prescribed in Section 127 for such a notice that could be verified; the notice should be issued without delay. The concession of Section 74A(9) is not available, since the penalty is not under Section 74A.

4. No double penalty - the omission of the five machines from the monthly statements (FORM GST SRM-II) is a consequence of the same default; no separate penalty under Section 122(1)(x) or (xvii) or Section 125 is proposed (Section 75(13) and the principle that the specific provision applies; Section 125 is a residual penalty for contraventions 'for which no penalty is separately provided').

5. The directors and the supplier - **no penalty is proposed on Mr. Z, Mr. D or Mr. S/M/s MMM**. Section 122A(1) penalises the person engaged in the manufacture, i.e. the Company; it contains no provision for abettors. Section 122(3)(a) can be used only for aiding or abetting offences specified in clauses (i) to (xxi) of Section 122(1), and Section 122A is not one of them. The notification imposes duties on 'registered persons engaged in manufacturing' only; it does not make a seller or transporter of machines liable for anything. The role of the directors and Mr. S is therefore relied on as evidence (the knowledge and the intent), and the notice is addressed to the Company, through its directors. The description of the machines as 'spares' in the invoices of M/s MMM is a separate matter: it may be examined against M/s MMM as an incorrect invoice [Section 122(1)(i)] in separate proceedings, since the facts on tax paid by it are not before us.

6. Registration of persons versus registration of machines - the ordinary registration under Section 22/25 identifies a taxable person and gives a GSTIN, and failure attracts Section 122(1)(xi) with the tax; the registration of machines under the special procedure identifies the production capacity of a registered person: each machine is registered with its make, model, track capacity per hour and electricity consumption, certified by a Chartered Engineer, and each is given a unique number (the GSTIN with three digits). The declared capacity and the monthly electricity, input and production data (SRM-II) let the officer check whether the output declared in the returns is plausible. The five machines in Hall B were invisible to that check: the production of eight-track machines on two shifts, which the Company did not report, is the real loss to the revenue.

7. Tax demand (not made here) - the notification as read does not provide for a capacity-based determination of tax: it requires the registration of machines and the filing of the monthly statements, and its only reference to capacity is the machine details and the Chartered Engineer's certificate. A demand of tax on the production of the five machines would therefore have to be raised under Section 74A on proof of actual unaccounted production (the Hall B production book, cartons, electricity, inputs, dispatch), and not on the declared capacity; the quantification is under way, and no tax is demanded in this notice. If the production is established, a separate notice under Section 74A, with penalty under Section 74A(5)(ii), will follow; the penalty under Section 122A is in addition to it ('in addition to any penalty under Chapter XV').

8. Prosecution - no tax evasion is quantified in this notice and Section 132 is not attracted at this stage. A prosecution under Section 132 will have to be considered when the tax on the Hall B production is established.

9. Authority - the central tax penalty (Rs.5,00,000/-) is within the Superintendent's limit (up to Rs.10 lakh), but the notice also proposes confiscation of machines of the value of Rs.72,50,000/-, and it is therefore issued by the Deputy Commissioner (above Rs.10 lakh up to Rs.1 crore), as in the drafting note.

Illustrative working of the penalty under Section 122A(1) (fixed amount of Rs.1,00,000/- for every machine not registered; the 'days' column shows the default, for information only):

Machine	Serial no.	Invoice date	Installed on	Due date for SRM-I (24 hrs)	Days to 18.12.2025	Penalty (Rs.)
M-10	PK8-2507-0311	05.08.2025	12.08.2025	13.08.2025	127	1,00,000
M-11	PK8-2507-0312	05.08.2025	12.08.2025	13.08.2025	127	1,00,000
M-12	PK8-2507-0313	05.08.2025	12.08.2025	13.08.2025	127	1,00,000
M-13	PK8-2509-0402	14.10.2025	20.10.2025	21.10.2025	58	1,00,000
M-14	PK8-2509-0403	14.10.2025	20.10.2025	21.10.2025	58	1,00,000
TOTAL	**5 machines**					**5,00,000**

Basis: *The penalty is per machine and does not increase with the days of default; the same amount is proposed under the UPGST Act, subject to the confirmation (in the drafting note) that the State Act has a corresponding Section 122A. The values of the machines (Rs.72,50,000/-, Rs.14,50,000/- each, excluding tax) are the invoice values and are the basis for the authority and for the confiscation.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Pan Products Pvt. Ltd., having its registered office and factory at YYYY, Panki, Kanpur Nagar, Uttar Pradesh, through its directors Mr. Z (Managing Director) and Mr. D (Whole-time Director), is hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Kanpur Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the five filling and packing machines Nos. M-10 to M-14 (serial nos. PK8-2507-0311, -0312, -0313, PK8-2509-0402 and -0403), installed in the Company's factory at YYYY, Panki, Kanpur on 12.08.2025 and 20.10.2025 and used in the manufacture of pan masala, should not be held to be machines not registered under the special procedure notified under Section 148 of the CGST Act, 2017 by Notification No. 04/2024-Central Tax dated 05.01.2024, in contravention of that procedure;

(ii) a penalty of Rs.5,00,000/- (Rupees Five Lakh only), being Rs.1,00,000/- for each of the five machines not so registered, should not be imposed on the Company under Section 122A(1) of the CGST Act, 2017, and a penalty of the same amount, Rs.5,00,000/-, under the corresponding provision of the UPGST Act, 2017, total Rs.10,00,000/-;

(iii) the five machines, of the value of Rs.72,50,000/- (excluding tax), seized on 18.12.2025, should not be confiscated under Section 122A(2) of the CGST Act, 2017/UPGST Act, 2017, unless (a) the penalty is paid and (b) the machines are registered under the special procedure within three days of the receipt of the communication of the order of penalty, as provided in the proviso to that sub-section; and

(iv) the Company should not be directed to furnish the details of the five machines in FORM GST SRM-I with the Chartered Engineer's certificate in FORM GST SRM-III, and to furnish, in FORM GST SRM-II, the revised monthly statements for August to December 2025 covering the production, inputs and electricity consumption of all the fourteen machines.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-KANPUR

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy Commissioner, CGST Division - [●], Kanpur Commissionerate, Uttar Pradesh

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Sections 122A and 127 of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017; summary in FORM GST DRC-01)

To,
M/s XXX Pan Products Pvt. Ltd., (GSTIN: [●]),
through its directors Mr. Z (Managing Director) and Mr. D (Whole-time Director),
YYYY, Industrial Area, Panki, Kanpur Nagar, Uttar Pradesh.

(hereinafter referred to as 'the Company' or 'the Noticee')

WHEREAS the Company is registered under the CGST Act, 2017 and the UPGST Act, 2017 and manufactures pan masala (HSN 2106 90 20) in its factory at Panki, Kanpur. Pan masala is a good in the Schedule to Notification No. 04/2024-Central Tax dated 05.01.2024 issued under Section 148 of the CGST Act, 2017, which, with effect from 15.05.2024 (Notification No. 08/2024-Central Tax dated 10.04.2024), requires every registered person engaged in manufacturing such goods to furnish the details of each filling and packing machine in FORM GST SRM-I, within 30 days of the notification coming into effect, within 15 days of registration for a person registered afterwards, and within 24 hours of installation for every additional machine, and to file the monthly statement in FORM GST SRM-II by the 10th of the following month;

2. AND WHEREAS the Company filed FORM GST SRM-I on 12.06.2024 for nine machines (with the certificate in FORM GST SRM-III), and has filed FORM GST SRM-II every month for those nine machines only (RUD-1, RUD-2);

3. AND WHEREAS on the authorisation of the Additional Commissioner, CGST, Kanpur dated 17.12.2025 (RUD-3), the factory was inspected on 18.12.2025 under Section 67 of the CGST Act, 2017. As recorded in the panchnama of that date (RUD-4), fourteen machines (make 'PK-8') were found, nine in Hall A bearing the registration numbers shown on the portal, and five in Hall B, running two shifts, with no plates and with no registration on the portal, as detailed below:

Machine	Serial no.	Invoice of M/s MMM	Installed on	Value (Rs., ex-tax)
M-10	PK8-2507-0311	05.08.2025	12.08.2025	14,50,000
M-11	PK8-2507-0312	05.08.2025	12.08.2025	14,50,000
M-12	PK8-2507-0313	05.08.2025	12.08.2025	14,50,000
M-13	PK8-2509-0402	14.10.2025	20.10.2025	14,50,000
M-14	PK8-2509-0403	14.10.2025	20.10.2025	14,50,000
TOTAL				**72,50,000**

4. AND WHEREAS the invoices of M/s MMM, a trader of Kanpur whose proprietor is the brother-in-law of Mr. Z (RUD-5), describe the five machines as 'machinery spares and accessories', and the payment of Rs.72,50,000/- plus tax was made by the Company in August and October 2025 (RUD-6). The sanctioned electrical load of the factory was raised from 750 kVA to 1,000 kVA in September 2025 (RUD-7). A 'Hall B production book' for September to December 2025, showing production on the five machines on 78 days between 13.08.2025 and 17.12.2025, was taken in custody (RUD-8);

5. AND WHEREAS the five machines were seized on 18.12.2025 under Section 67(2) read with Section

122A(2) (FORM GST INS-02), sealed in Hall B and left in the custody of Mr. F under an order under the first proviso to Section 67(2) and a custody undertaking (RUD-9). The period of six months under Section 67(7) was extended up to 18.12.2026 by an order dated 12.06.2026 (RUD-10);

6. AND WHEREAS in his statement dated 19.12.2025 under Section 70 (RUD-11) Mr. D, the whole-time director in charge of the factory, stated that the five machines were bought to increase the output, that he knew of the 24-hour rule and did not register them because registration 'brings the department into the factory and shows the real capacity', that the production of Hall B was recorded in a separate book, and that the invoices were made in the name of 'machinery spares' by Mr. S 'to avoid questions from the bank and the department'. Mr. F (RUD-12) confirmed the dates of installation and the running of the machines on two shifts, and Mr. S of M/s MMM (RUD-13) confirmed that complete machines were supplied and that the description 'spares' was used at the request of Mr. D;

7. AND WHEREAS it appears that the Company did not furnish the details of the five machines M-10 to M-14 in FORM GST SRM-I within 24 hours of their installation, or at any time, as required by paragraph 1(3) of the special procedure notified under Section 148, and that the Company has thereby contravened the special procedure, rendering itself liable to penalty of Rs.1,00,000/- for every machine not registered under Section 122A(1) of the CGST Act, 2017 (and the corresponding provision of the UPGST Act, 2017), i.e. 5 x Rs.1,00,000/- = Rs.5,00,000/- under each Act; and that the five machines are liable to seizure and confiscation under Section 122A(2);

8. AND WHEREAS it also appears that the monthly statements in FORM GST SRM-II for August to November 2025 did not cover the five machines, contrary to paragraph 2 of the special procedure;

9. AND WHEREAS no demand of tax is made in this notice. The quantification of the production on the five machines is continuing, and this notice is without prejudice to a separate notice for tax on that production;

NOW, THEREFORE

M/s XXX Pan Products Pvt. Ltd., through its directors Mr. Z and Mr. D, is hereby called upon to show cause in writing to the Deputy Commissioner, CGST Division - [•], Kanpur Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the five filling and packing machines Nos. M-10 to M-14 (serial nos. PK8-2507-0311, -0312, -0313, PK8-2509-0402 and -0403), installed in the Company's factory at YYYY, Panki, Kanpur on 12.08.2025 and 20.10.2025 and used in the manufacture of pan masala, should not be held to be machines not registered under the special procedure notified under Section 148 of the CGST Act, 2017 by Notification No. 04/2024-Central Tax dated 05.01.2024, in contravention of that procedure;

(ii) a penalty of Rs.5,00,000/- (Rupees Five Lakh only), being Rs.1,00,000/- for each of the five machines not so registered, should not be imposed on the Company under Section 122A(1) of the CGST Act, 2017, and a penalty of the same amount, Rs.5,00,000/-, under the corresponding provision of the UPGST Act, 2017, total Rs.10,00,000/-;

(iii) the five machines, of the value of Rs.72,50,000/- (excluding tax), seized on 18.12.2025, should not be confiscated under Section 122A(2) of the CGST Act, 2017/UPGST Act, 2017, unless (a) the penalty is paid and (b) the machines are registered under the special procedure within three days of the receipt of the communication of the order of penalty, as provided in the proviso to that sub-section; and

(iv) the Company should not be directed to furnish the details of the five machines in FORM GST SRM-I with the Chartered Engineer's certificate in FORM GST SRM-III, and to furnish, in FORM GST SRM-II, the revised monthly statements for August to December 2025 covering the production, inputs and electricity consumption of all the fourteen machines.

10. The Noticee is further informed that:

- a written reply to this notice, with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on merits;

- a personal hearing will be granted on a date to be separately intimated, before the order under Section 122A is passed;
- the machines remain under seizure and sealed, and shall not be used, removed or dealt with. If the order imposes the penalty, the machines will be released if the penalty is paid and the machines are registered under the special procedure within three days of the receipt of the communication of the order of penalty; if not, they will be confiscated;
- this notice is issued without prejudice to any other action under the CGST Act, 2017/UPGST Act, 2017, including the demand of tax under Section 74A on the production of the five machines and prosecution under Section 132, or under any other law for the time being in force.

List of Relied Upon Documents (RUDs):

RUD-1: FORM GST SRM-I and FORM GST SRM-III filed on 12.06.2024, with the list of nine registered machines;

RUD-2: FORM GST SRM-II statements filed for the months from April 2025 to November 2025;

RUD-3: Authorisation (FORM GST INS-01) dated 17.12.2025;

RUD-4: Panchnama of inspection dated 18.12.2025, with photographs of the nameplates and the portal record of registered machines;

RUD-5: Invoices of M/s MMM dated 05.08.2025 and 14.10.2025;

RUD-6: Purchase ledger and bank statements showing payment to M/s MMM;

RUD-7: Electricity connection record showing the enhancement of the load in September 2025;

RUD-8: 'Hall B production book' taken in custody on 18.12.2025;

RUD-9: Order of seizure (FORM GST INS-02) with inventory, order under the first proviso to Section 67(2) and custody undertaking dated 18.12.2025;

RUD-10: Order dated 12.06.2026 extending the period under Section 67(7);

RUD-11 to RUD-13: Statements under Section 70 of Mr. D (19.12.2025), Mr. F (20.12.2025) and Mr. S (22.12.2025);

Annexure-A: Machine-wise statement of penalty under Section 122A(1) [as per the working in Part B].

(_____)
Deputy Commissioner, CGST
Division - [•], Kanpur Commissionerate

Copy to: The Additional Commissioner, CGST, Kanpur (authorising officer), for information.

Drafting note (not part of the notice):

- *The addressee, GSTIN, jurisdictional officer, F. No./DIN and dates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The names (Mr. Z, Mr. D, Mr. F, Mr. S, M/s MMM) are fictional placeholders.*
- ***Teaching point - the machine registration regime.*** *Section 148 permits a special procedure for a class of registered persons; Notification No. 04/2024-Central Tax (pan masala, gutkha and similar tobacco products) requires each filling and packing machine to be registered on the portal (FORM GST SRM-I, with the Chartered Engineer's certificate in SRM-III), each new machine within 24 hours of installation, and a monthly statement of inputs, production by machine and electricity (SRM-II). The point is to make the production capacity visible to the department; machines which are not registered are the surest method of making unrecorded production. Section 122A gives a fixed penalty of Rs.1,00,000/- per unregistered machine, plus seizure and confiscation unless the penalty is paid and the machine registered within three days of the penalty order. This is different from the ordinary registration of Exercises 01-02 (registration of a person; penalty under Section 122(1)(xi) tied to tax) and from Exercise 84 (seizure and confiscation under Section 130, where a tax or a goods-based measure applies).*

- ***Penalty-only notice and persons charged.*** *No tax is demanded: the notification as read contains no capacity-based determination of tax, and the tax on the Hall B production can be demanded only on proof of actual production under Section 74A. Section 122A penalises the manufacturer only; directors and the supplier of the machines have no duty under the notification and cannot be reached by Section 122(3)(a), which is limited to the offences in Section 122(1)(i) to (xxi). They are witnesses, whose statements prove knowledge and intent.*
- ***Master Chart discrepancy.*** *Template X row 1 cites Notification No. 30/2023-Central Tax dated 31.07.2023; that notification was rescinded by Notification No. 03/2024-Central Tax with effect from 01.01.2024 and replaced by Notification No. 04/2024-Central Tax (effective 15.05.2024 after the deferment by Notification No. 08/2024-Central Tax). The Chart's statement of penalty under Section 122A (Rs.1 lakh per machine, effective 01.10.2024) and of seizure/confiscation agrees with the Act. The Chart says nothing on the three-day proviso, which is the only route to release. Row 2 of the Chart (Section 148A/122B, track and trace) has not been examined or verified and is not used here.*
- ***Authority.*** *The central tax penalty (Rs.5,00,000/-) alone is within the Superintendent's limit under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore); as the notice proposes the confiscation of machines of the value of Rs.72,50,000/-, the notice is issued by the Deputy Commissioner. The monetary limits applicable to Section 122A and confiscation of machines are to be verified in the Circular before the draft is finalised.*
- ***To be confirmed before issue.*** *(a) Whether the UPGST Act, 2017 contains a corresponding Section 122A (if not, the penalty under the UPGST Act is dropped, and the total is Rs.5,00,000/-); (b) any amendment of Notification No. 04/2024-Central Tax after its issue (the dates of deferment and the due dates of the forms); (c) the procedure for the seizure of machines under Section 122A(2) (it has been done here under Section 67(2) and Section 67(7) applies); (d) the 'FORM GST DRC-01' format for a notice under Section 127.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 86

Manufacturer dispatching notified goods without the unique identification marking - Section 148A and penalty under Section 122B

Exercise 86: Manufacturer dispatching notified goods without the unique identification marking - Section 148A and penalty under Section 122B

Situation in Brief:

1. M/s XXX Pvt. Ltd. (the 'Company'), registered in Gujarat under the CGST Act, 2017 and the Gujarat GST Act, 2017, has its factory at YYYY, Vadodara, Gujarat, where it manufactures and sells packaged consumer goods under the brand 'XXX Gold' (the 'Goods'). By Notification No. [•]/2025-Central Tax dated [•] issued under Section 148A(1) of the CGST Act, 2017 (inserted by the Finance Act, 2025 and in force from 01.10.2025 by Notification No. 16/2025-Central Tax dated 17.09.2025), the Goods have been specified as goods, and manufacturers of the Goods as persons, to whom the track and trace mechanism applies, with effect from 01.11.2025. The Company's Managing Director is Mr. Z; its Production Manager is Mr. P; the dispatch department is headed by Mr. Q.

2. Under the notified mechanism a manufacturer of the Goods is required to (a) obtain, through the system set up for the purpose and operated by the prescribed agency (the 'System Agency'), the unique identification marking ('UIM') for the Goods, on payment of the amount prescribed for the system; (b) affix a UIM on every package (carton) of the Goods before it leaves the factory and record the affixation in the system; and (c) furnish the prescribed information and keep the prescribed records [Section 148A(3)(a), (b) and (d)]. A 'unique identification marking' is one that is unique, secure and non-removable, and includes a digital stamp or mark [Section 2(116A)]. Failure to comply attracts a penalty under Section 122B.

3. On 12.01.2026 the System Agency, in the periodical data-sharing report, flagged the Company's account because the UIMs affixed and recorded were far fewer than the e-way bill and GSTR-1 data suggested. The Superintendent, CGST Range-[•], Vadodara, therefore carried out an inspection of the factory and the dispatch bay under Section 71 of the CGST Act on 14.01.2026, in the presence of Mr. Q, and took copies of the dispatch register, the UIM wallet statement and the packing-line records. The data of the System Agency (UIMs issued, affixed and activated, month-wise), the e-way bill statement of the Company (520 e-way bills for the Goods in November and December 2025) and the GSTR-1 for the two months were matched carton by carton:

Month	Cartons dispatched (e-way bill/ invoice)	Cartons with UIM recorded in system	Cartons without UIM	Value of cartons without UIM (Rs.)
November 2025	15,400	13,000	2,400	2,28,00,000
December 2025	16,400	14,600	1,800	1,71,00,000
TOTAL	**31,800**	**27,600**	**4,200**	**3,99,00,000**

4. Each carton was invoiced at an assessable value of Rs.9,500/- (uniform price list, verified from 40 invoices). The UIM wallet statement shows that the balance in the Company's wallet with the System Agency was nil from 10.11.2025 to 21.11.2025 and again from 14.12.2025 to 24.12.2025, because the amount prescribed for the UIMs was not paid in time. Packing-line records show that the packing and the dispatch of the Goods continued on all these days; cartons packed on those days bear no UIM, and the system shows no activation event for them. Samples drawn on 15.01.2026 by the officers from the godowns of two distributors at Surat and Rajkot (RUD-9) confirmed that cartons of the invoices of those two periods carried no UIM.

5. A summons dated 16.01.2026 under Section 70 of the CGST Act was issued to the Company. The statement of Mr. P was recorded on 22.01.2026: he stated that the UIM stock ran out on 10.11.2025, that he informed Mr. Z in writing (e-mail of 10.11.2025), and that dispatch of the cartons without UIM was done on the oral instructions of Mr. Z. The statement of Mr. Z was recorded on 23.01.2026: he admitted that the wallet balance with the System Agency was exhausted on the two occasions for want of funds and that he had directed that dispatches be continued 'so that the distributors' orders are not lost'; that he knew a carton without a UIM could not be tracked; and that he thought 'the penalty would be small'. Both stated that the tax on all the cartons was paid in the returns.

6. Examination of the returns shows that all the 31,800 cartons were invoiced; the outward supply is fully

disclosed in GSTR-1 and the tax on them has been paid in cash and credit in the GSTR-3B for November and December 2025 as per the due dates, and no input tax credit is in dispute. The goods were supplied to registered distributors with e-way bills. The Goods are taken to be taxable at 18% (9% central tax and 9% State tax) for the purposes of this exercise [see Drafting notes]. There is therefore no short payment of tax; the issue is solely the non-compliance with the track and trace mechanism.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Pvt. Ltd. (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against M/s XXX Pvt. Ltd. and others (under heading Consequences of Contravention of legal Provisions).

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to M/s XXX Pvt. Ltd., calling upon it to show cause as to why action should not be taken against it, while listing the proposed action to be taken.

(iv) Also prepare the draft Show Cause Notice for issuance to M/s XXX Pvt. Ltd.

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SUGGESTED SOLUTION

(Detection from system data, penalty under Section 122B, and Draft Show Cause Notice - M/s XXX Pvt. Ltd., Vadodara Commissionerate)

A. CONTRAVENTION

On the facts as recorded, the following provisions stand contravened (read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017 [GGST Act]):

1. **Section 148A(3)(a) of the CGST Act, 2017, read with the notification issued under Section 148A(1)** - failure by a specified person (the manufacturer of the specified Goods) to affix the unique identification marking on 4,200 cartons of the Goods dispatched from 01.11.2025 to 31.12.2025.
2. **Section 148A(3)(b) and (d)** - failure to pay the prescribed amount for the system in time (the cause of the shortage of UIMs) and failure to keep the prescribed records of affixation for the cartons that were dispatched; the exact sub-clauses depend on the rules framed under Section 148A [UNVERIFIED - rules not located; confirm before issue].

Note: *No contravention of Section 9, 31, 37 or 39 is alleged: the supplies were invoiced, reported in GSTR-1 and the tax was paid in the returns. The Master Chart (Template X, row 2) describes the offence only as 'failure to comply with track and trace mechanism'; the Notice should always name the sub-section of Section 148A and the notification and rule actually breached. The Master Chart measures the penalty by 'the amount of tax involved'; the Act (Section 122B) uses 'the tax payable on such goods'.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contravention exposes the Company to the following action under the CGST Act, 2017, read with the corresponding provisions of the GGST Act, 2017:

1. Penalty under Section 122B - a person referred to in clause (b) of Section 148A(1) who acts in contravention of Section 148A is, 'notwithstanding anything contained in this Act' and in addition to any penalty under Chapter XV or Chapter XIX, liable to a penalty equal to Rs.1,00,000/- or ten per cent of the tax payable on such goods, whichever is higher. The Company, as a manufacturer of the Goods specified under Section 148A(1)(b), is such a person. The Section applies from 01.10.2025 [Notification No. 16/2025-Central Tax], and the contravention began on 10.11.2025, so the Section is applicable. Unlike Section 122(1) or 74A(5), Section 122B contains no mens rea or 'fraud' element: the penalty follows the failure to comply.
2. Which tax? - 'the tax payable on such goods' is the tax on the 4,200 cartons dispatched without UIM, and not the tax on all the 31,800 cartons: the contravention is confined to the cartons that carried no UIM. The taxable value of these cartons is Rs.3,99,00,000/- (4,200 x Rs.9,500) and the tax at 18% is Rs.71,82,000/- (central tax Rs.35,91,000/- and State tax Rs.35,91,000/-).
3. Computation - ten per cent of the tax is Rs.7,18,200/- (Rs.3,59,100/- under each of the CGST and GGST Acts), against the floor of Rs.1,00,000/-. The ten per cent figure is the higher and is therefore the penalty. The floor of Rs.1,00,000/- would apply only where the tax on the unmarked cartons is less than Rs.10,00,000/-, i.e. where the value of unmarked goods is less than about Rs.55.56 lakh at 18%.
4. Demand of tax, interest - not proposed. The tax on all the cartons was paid at the time of the supply, so Section 74A(1) has no application, and no interest under Section 50 arises. The notice is therefore a penalty-only notice (compare Exercise 50), (the Master Chart note says that Section 122B is 'apart from action under Chapter XV'; on these facts there is no Chapter XV action to take).
5. Persons proceeded against - only the Company. Section 148A(3) casts the obligations on the 'specified persons', and Section 122B penalises 'any person referred to in clause (b) of sub-section (1) of Section 148A'. (a) Mr. Z and Mr. P are not specified persons; Section 122(3)(a) (aiding or abetting) is confined to the offences in clauses (i) to (xxi) of Section 122(1) and does not reach Section 122B. Their statements are used as evidence, and they are not noticees. (b) The transporters and the distributors who accepted the unmarked cartons are liable only if they have themselves been specified as persons possessing or dealing in the Goods under Section 148A(1)(b); there is no such specification in this case (UNVERIFIED

for the actual notification). (c) Section 137 (offences by companies) deals with the offences under Chapter XIX; Section 148A/122B is not an offence under Section 132, so prosecution is not available.

6. Section 126 - the breach is neither minor nor bona fide: Mr. Z knew the effect of the non-compliance and decided to continue despite a written warning. The penalty is fixed by statute (the higher of the two amounts); the adjudicating officer's discretion in the quantum is limited to ensuring that the notice states the nature of the breach and the provision (Section 126) and affords a hearing. The question of whether the Company should be given any concession for the speed of its rectification is a matter for its reply.

7. Other penalties not proposed - Section 122(1) and Section 125 are not invoked, as the breach is specifically penalised by Section 122B (the residual penalty in Section 125 applies only where no penalty is separately provided) and Section 75(13) forbids a double penalty for the same act.

8. Seizure / confiscation - the cartons dispatched without UIM have left the factory and are with the distributors; Sections 129/130 are not invoked (the Chart does not link the confiscation of goods to Section 148A and no provision to that effect was found - UNVERIFIED). The Company is to be advised to regularise the stock lying in the dispatch bay by obtaining UIMs before further dispatch.

9. Limitation - Section 74A(2) fixes the limitation for notices demanding tax; no separate period is prescribed for a penalty-only notice under Section 122B [UNVERIFIED]. As a safe course the notice is issued within three years of the contravention (the notice here is within one year), and the officer must pass the order after hearing under Section 126.

Illustrative working of the penalty under Section 122B:

Particulars	Cartons	Taxable value (Rs.)	Tax at 18% (Rs.)	10% of tax (Rs.)	Penalty - higher of Rs.1 lakh and 10% (Rs.)
Central tax / CGST Act	4,200	1,99,50,000	35,91,000	3,59,100	3,59,100
State tax / GGST Act	4,200	1,99,50,000	35,91,000	3,59,100	3,59,100
TOTAL	**4,200**	**3,99,00,000**	**71,82,000**	**7,18,200**	**7,18,200**

Basis: *The tax is worked on the taxable value as invoiced (Rs.9,500 per carton). The tax actually paid on the 4,200 cartons in the returns is the same Rs.71,82,000/- and should be tallied with the GSTR-3B before issue. The assumed rate of 18% is for the exercise only; the actual rate (and cess, if any) for the notified Goods must be substituted. If the Rs.1 lakh floor is read as applying to each Act separately, there is no difference here, since each amount exceeds Rs.1 lakh.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Pvt. Ltd., having its factory at YYYY, Vadodara, Gujarat (through its Managing Director, Mr. Z), is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Vadodara Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the 4,200 cartons of the Goods of taxable value Rs.3,99,00,000/- dispatched between 01.11.2025 and 31.12.2025 without the unique identification marking should not be held to have been dispatched in contravention of Section 148A(3) of the CGST Act, 2017/GGST Act, 2017 read with the notification issued under Section 148A(1);

(ii) a penalty of Rs.3,59,100/- under the CGST Act, 2017 and Rs.3,59,100/- under the GGST Act, 2017, total Rs.7,18,200/- (Rupees Seven Lakh Eighteen Thousand Two Hundred only), being ten per cent of the tax of Rs.71,82,000/- payable on the said goods (which is higher than Rs.1,00,000/-), should not be imposed on it under Section 122B of the CGST Act, 2017/GGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-VADODARA

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Superintendent, CGST Range - [●], Division - [●], Vadodara Commissionerate, Gujarat

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Sections 122B and 126 of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Gujarat Goods and Services Tax Act, 2017)

To,
M/s XXX Pvt. Ltd.,
(through its Managing Director, Mr. Z),
YYYY, Vadodara, Gujarat.

(hereinafter referred to as 'the Noticee')

WHEREAS M/s XXX Pvt. Ltd. is a registered person manufacturing the packaged goods 'XXX Gold' (the 'Goods') at its factory at YYYY, Vadodara; and WHEREAS by Notification No. [●]/2025-Central Tax dated [●], issued under Section 148A(1) of the CGST Act, 2017, the Goods and the manufacturers of the Goods were specified as the goods and the persons to whom the track and trace mechanism applies, with effect from 01.11.2025; Section 148A having come into force on 01.10.2025 by Notification No. 16/2025-Central Tax dated 17.09.2025 (RUD-1);

2. AND WHEREAS under Section 148A(3) a specified person is required to affix the unique identification marking (UIM), as defined in Section 2(116A), on the Goods or their packages, to furnish the prescribed information and to keep records, and to pay the prescribed amounts for the system; and under Section 122B a person referred to in Section 148A(1)(b) who acts in contravention of that Section is liable, in addition to any penalty under Chapter XV or Chapter XIX, to a penalty equal to Rs.1,00,000/- or ten per cent of the tax payable on such goods, whichever is higher;

3. AND WHEREAS the data of the System Agency for November and December 2025 (RUD-2), the e-way bill statement (RUD-3) and the GSTR-1 (RUD-4), when matched, show that of the 31,800 cartons of the Goods dispatched, only 27,600 cartons were recorded in the system as bearing a UIM, and that 4,200 cartons (2,400 in November and 1,800 in December 2025), of taxable value Rs.3,99,00,000/- at Rs.9,500/- per carton, were dispatched without any UIM, as per Annexure-A;

4. AND WHEREAS the wallet statement of the Noticee with the System Agency (RUD-5) shows a nil balance from 10.11.2025 to 21.11.2025 and from 14.12.2025 to 24.12.2025 for want of payment of the prescribed amount, and the packing-line and dispatch records obtained during the inspection under Section 71 on 14.01.2026 (RUD-6) show that packing and dispatch continued on those days; samples drawn on 15.01.2026 at two distributors' godowns (RUD-9) bore no UIM;

5. AND WHEREAS the Production Manager, Mr. P, in his statement dated 22.01.2026 (RUD-7), and the Managing Director, Mr. Z, in his statement dated 23.01.2026 (RUD-8), both recorded under Section 70, stated that the UIM stock ran out on 10.11.2025, that this was reported in writing to the Managing Director, that dispatches were continued on his oral instructions so that the distributors' orders might not be lost, and that the Managing Director knew that a carton without UIM could not be tracked;

6. AND WHEREAS it appears that the Noticee, being a person to whom Section 148A(1)(b) applies, contravened Section 148A(3)(a) (and Section 148A(3)(b)/(d) to the extent of the rules framed thereunder) by dispatching 4,200 cartons without UIM, and that the tax payable on the said goods, at 18%, is Rs.71,82,000/- (central tax Rs.35,91,000/-; State tax Rs.35,91,000/-), the ten per cent of which, Rs.7,18,200/-, exceeds Rs.1,00,000/-;

7. AND WHEREAS the tax on all the cartons dispatched has been paid in the returns of the months concerned and no demand of tax is therefore proposed in this notice, which is a notice for penalty only;

8. AND WHEREAS it thus appears that the Noticee has contravened Section 148A(3) of the CGST Act, 2017/GGST Act, 2017 read with the notification issued thereunder, and has rendered itself liable to penalty under Section 122B of the CGST Act, 2017/GGST Act, 2017;

NOW, THEREFORE

M/s XXX Pvt. Ltd., through its Managing Director, Mr. Z, is hereby called upon to show cause in writing to the Superintendent, CGST Range - [•], Vadodara Commissionerate, within thirty (30) days of the receipt of this notice, as to why:

(i) the 4,200 cartons of the Goods of taxable value Rs.3,99,00,000/- dispatched between 01.11.2025 and 31.12.2025 without the unique identification marking should not be held to have been dispatched in contravention of Section 148A(3) of the CGST Act, 2017/GGST Act, 2017 read with the notification issued under Section 148A(1);

(ii) a penalty of Rs.3,59,100/- under the CGST Act, 2017 and Rs.3,59,100/- under the GGST Act, 2017, total Rs.7,18,200/- (Rupees Seven Lakh Eighteen Thousand Two Hundred only), being ten per cent of the tax of Rs.71,82,000/- payable on the said goods, which is higher than Rs.1,00,000/-, should not be imposed on it under Section 122B of the CGST Act, 2017/GGST Act, 2017.

9. The Noticee is further informed that:

- a written reply to this notice, with all documents relied upon, including any evidence that any of the 4,200 cartons did bear a UIM, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on merits;
- an opportunity of personal hearing will be granted before adjudication, on a date to be separately intimated; no penalty will be imposed without it [Section 126];
- this notice is issued without prejudice to any other action that may be taken against the Noticee or any other person under the CGST Act, 2017/GGST Act, 2017 or any other law for the time being in force, including action for any further non-compliance of Section 148A after 31.12.2025.

List of Relied Upon Documents (RUDs):

RUD-1: Notification No. 16/2025-Central Tax dated 17.09.2025 and Notification No. [•]/2025-Central Tax dated [•] under Section 148A(1);

RUD-2: Data of the System Agency for UIMs issued, affixed and activated for November and December 2025, with the report dated 12.01.2026;

RUD-3: E-way bill statement of the Noticee for the Goods, November and December 2025 (520 e-way bills);

RUD-4: GSTR-1 and GSTR-3B of the Noticee for November and December 2025;

RUD-5: UIM wallet statement of the Noticee with the System Agency;

RUD-6: Inspection report under Section 71 dated 14.01.2026, with the dispatch register and packing-line records;

RUD-7: Statement of Mr. P dated 22.01.2026 and e-mail dated 10.11.2025 from Mr. P to Mr. Z;

RUD-8: Statement of Mr. Z dated 23.01.2026;

RUD-9: Sample-drawal panchnamas dated 15.01.2026 at the godowns of the distributors at Surat and Rajkot;

Annexure-A: Month-wise reconciliation of cartons dispatched and cartons with UIM, and computation of the penalty [as per the table in the Situation and the working in Part B].

(_____)
Superintendent, CGST
Range - [•], Division - [•], Vadodara Commissionerate

Copy to: The Deputy/Assistant Commissioner, CGST Division, Vadodara, for information.

Drafting note (not part of the notice):

- *The addressee, jurisdictional range/officer, F. No./DIN, dates, the number and date of the notification under Section 148A(1), the name of the System Agency and the rates shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The case is built on the assumptions that (a) the Goods and the manufacturers have been specified by a notification under Section 148A(1) w.e.f. 01.11.2025 and (b) the UIM is required at carton level. The Finance Act, 2025 inserted Section 148A and Section 122B and Section 2(116A); Notification No. 16/2025-Central Tax brought them into force on 01.10.2025. At the time of writing no notification specifying the goods, and no rules, could be traced; the actual notification and rules (and the goods covered, such as pan masala or tobacco products, and any cess or special rate) must be checked and cited as they are, in place of the bracketed text. The 18% rate is an exercise assumption only.*
- ***Teaching point.*** *This is a new compliance regime and a pure penalty case: (i) 'the tax payable on such goods' is the tax on the unmarked cartons only; (ii) the penalty is the higher of Rs.1 lakh and 10% of that tax and, unlike Section 122(1) or 74A(5), has no fraud element; (iii) non-compliance is proved from system data (the System Agency's UIM data matched with the e-way bill and GSTR-1 data) and not from a seizure. Compare Exercise 85 (failure to register machines, where the penalty is per machine and the offence is proved by physical verification of the machines) and Exercise 16 (e-way bill data used to prove a tax demand): here the data prove a regulatory default and no tax demand arises.*
- ***Route choice.*** *Tax and interest were paid, so Section 74A is not used (compare Exercises 02 and 52, which are demand cases); if some cartons had been supplied without payment of tax, a Section 74A demand would be added and Section 122B would be in addition to the penalty under Section 74A(5) because Section 122B expressly operates 'in addition to any penalty under Chapter XV'. The wording of Section 122B is 'tax payable on such goods', whereas the Master Chart says 'amount of tax involved'; the Act is followed.*
- ***Who is not charged.*** *Directors and managers are used as witnesses; Section 122B reaches only the person specified under Section 148A(1)(b), and Section 122(3)(a) does not extend to Section 122B. Transporters and dealers are not charged unless specified. If the actual notification specifies dealers as 'persons', each such dealer who stocked unmarked cartons would be a separate noticee. Section 126: the notice must state the nature of the breach and the provision.*
- *The draft should be settled by the jurisdictional Range/Division before issue, including verification of the issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). The central tax penalty here is Rs.3,59,100/-, within the Superintendent's limit; the authority for a penalty-only notice is to be confirmed.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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Exercise 87

Purchase, storage and resale of copper wire received without invoice - confiscation under Section 130, demand on the resale under Section 74A and penalties

Exercise 87: Purchase, storage and resale of copper wire received without invoice - confiscation under Section 130, demand on the resale under Section 74A and penalties

Situation in Brief:

1. M/s XXX Metals Pvt. Ltd. (the 'Company'), registered in Haryana, trades in non-ferrous scrap and wire from its registered place of business at YYYY, Panipat, Haryana. Mr. Z is its Director and runs the business; Mr. P is the in-charge of the godown at Plot No. [•], Samalkha Road, Panipat, which is not shown in the Company's registration certificate either as a principal or as an additional place of business. M/s AAA Cables Pvt. Ltd. ('AAA'), Ghaziabad, Uttar Pradesh, manufactures copper wire (HSN 7408), taxable at 18% (the rate was not changed with effect from 22.09.2025 for this HSN [see Drafting notes]); its Director is Mr. D.

2. On 30.03.2026 officers of the Ghaziabad Commissionerate searched the factory of AAA under Section 67 and found that the stock of copper wire was short by about 52 MT against the books, and recovered a dispatch diary kept by the dispatch clerk Mr. K, in which entries marked 'PNP-Z' recorded five lots of bare copper wire in kilograms, the date, the truck number, 'rate Rs.780' and 'cash received'. Mr. D stated on 31.03.2026 that between 14.02.2026 and 24.03.2026 AAA had sold 38,000 kg of copper wire without invoice and e-way bill to 'Z of Panipat', at Rs.780 per kg in cash against a market price of Rs.880 per kg, delivered by AAA's trucks at night to the godown at Samalkha Road; that Mr. Z had visited the factory twice; and that the 'rate was low because there is no bill'. The data of the GPS devices of the five trucks (RUD-4) and the FASTag records of the toll plaza on NH-44 at [•] show that the trucks crossed the toll between 01:05 and 02:40 hours on the five dates and reached the Samalkha Road godown between 02:15 and 03:50 hours.

3. Acting on this, on 02.04.2026 the Joint Commissioner, CGST, authorised in writing under Section 67(2) the search of the godown at Samalkha Road, Panipat. The godown was found locked; it was opened by Mr. P, who stated that he held the key on the instructions of Mr. Z. 24,000 kg of bare copper wire in coils (no tag, no invoice, no e-way bill, not recorded in any register) was found, weighed on a calibrated weighbridge, and seized under Section 67(2) by order in FORM GST INS-02 dated 02.04.2026, the Company being given the goods on supratnama in the godown. The CCTV system at the godown, recorded by the DVR, was also taken over; it shows, on the same five dates, the unloading of trucks with the same registration numbers between 02:10 and 04:00 hours, with Mr. P present and Mr. Z present on three of the five nights. The Company's books of account, stock register and GSTR-3B for February to March 2026 show no purchase or stock of copper wire from AAA, nor any invoice for the purchase.

4. Mr. P's statement was recorded on 03.04.2026 and the statement of Mr. Z on 06.04.2026, both under Section 70 (after summons dated 03.04.2026 and 04.04.2026). Mr. P stated that he opened the godown at night on the instructions of Mr. Z, kept a 'rough diary' of in-and-out quantities, and was told 'not to enter anything in the computer'. Mr. Z stated that he bought the copper wire from AAA at Rs.780 per kg in cash from 'K and D', without bill, because 'the price is lower by about 100 rupees', that he arranged night delivery 'to avoid police and sales-tax people', that he knew AAA's supply without bill was not legal ('without bill the maal is not clean'), that the godown was taken on rent from 01.01.2026 in the name of his wife and was not told to the department, and that 14,000 kg was resold to M/s BBB Traders, Ludhiana, Punjab, without bill at about Rs.910 per kg, partly in cash; the balance stock is the 24,000 kg that was seized. On 28.04.2026 Mr. Z retracted the statement by a letter in which he claimed that he was 'forced' to say so; the retraction does not mention any threat, the place, the officer or the time, and the statement had been written by Mr. Z in his own hand.

5. Bank statements of the Company's cash-credit account (RUD-8) show cash withdrawals in the five days before each delivery of Rs.55,00,000/-, Rs.55,00,000/-, Rs.60,00,000/-, Rs.45,00,000/- and Rs.60,00,000/- (total Rs.2,75,00,000/-) and UPI transfers of Rs.21,40,000/- in all to the account of Mr. K on the days of delivery, i.e. Rs.2,96,40,000/- in all, which matches the quantity at Rs.780 per kg. The market rate certificate dated 20.04.2026 of the Panipat Metal Merchants Association (RUD-10) records Rs.880 per kg as the prevailing price of bare copper wire from 01.02.2026 to 31.03.2026. The lots are tabulated below (the market value being taken at Rs.880 per kg):

Lot	Date of delivery	Qty (kg)	Paid at Rs.780/kg (Rs.)	Cash withdrawn (Rs.)	UPI to Mr. K (Rs.)	Market value at Rs.880/kg (Rs.)
1	14.02.2026	8,000	62,40,000	55,00,000	7,40,000	70,40,000
2	21.02.2026	7,500	58,50,000	55,00,000	3,50,000	66,00,000
3	02.03.2026	8,500	66,30,000	60,00,000	6,30,000	74,80,000
4	12.03.2026	6,000	46,80,000	45,00,000	1,80,000	52,80,000
5	24.03.2026	8,000	62,40,000	60,00,000	2,40,000	70,40,000
TOTAL		**38,000**	**2,96,40,000**	**2,75,00,000**	**21,40,000**	**3,34,40,000**

6. M/s BBB Traders, Ludhiana (Mr. B), was reached on 15.04.2026 and stated, with its purchase diary and UPI receipts (RUD-11), that it purchased 6,000 kg on 25.02.2026 and 8,000 kg on 15.03.2026 from 'XXX Panipat' at Rs.910 per kg, without invoice, and that the goods were taken by its own truck from the Samalkha Road godown. The sale value is Rs.1,27,40,000/-, the tax on it at 18% (inter-State supply, IGST) is Rs.22,93,200/-, and no invoice, no e-way bill and no tax return of the Company shows these sales. The unsold quantity (38,000 - 14,000 = 24,000 kg) is the stock found in the godown, which at the market price of Rs.880 per kg has a market value of Rs.2,11,20,000/- and attracts tax of Rs.38,01,600/-. By order dated 10.04.2026 in FORM GST DRC-22 the Commissioner provisionally attached one bank account of the Company under Section 83 to the extent of Rs.60,00,000/-. The six-month period of Section 67(7) was extended by the proper officer by a further six months by an order dated 25.09.2026, after notice to the Company.

7. Now in the light of the above, -

(i) Identify the provision(s) of GST law contravened by M/s XXX Metals Pvt. Ltd., Mr. Z and Mr. P (under heading Contravention).

(ii) Identify the provision(s) of GST law under which action is to be taken against them (under heading Consequences of Contravention of legal Provisions), deciding who is liable to the tax, whether the goods are to be confiscated and whether prosecution is to be considered.

(iii) Draft the Charging Paragraph of the Show Cause Notice proposed to be issued to them.

(iv) Also prepare the draft Show Cause Notice for issuance to them.

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SUGGESTED SOLUTION

(Search, seizure, Determination of Tax Liability under Section 74A, confiscation under Section 130 and Draft Show Cause Notice - M/s XXX Metals Pvt. Ltd., Mr. Z and Mr. P, Panipat)

A. CONTRAVENTION

On the facts as recorded, the following provisions stand contravened (read with the corresponding provisions of the Haryana Goods and Services Tax Act, 2017 [HGST Act] and the Integrated Goods and Services Tax Act, 2017 [IGST Act], and the Rules made under them):

1. **Section 130(1)(i), (ii) and (iv) of the CGST Act, 2017** - the Company received goods (38,000 kg of copper wire) in contravention of the Act/Rules with intent to evade payment of tax [clause (i)], did not account for goods on which tax is liable to be paid [clause (ii)], and contravened the provisions of the Act and the Rules with intent to evade payment of tax [clause (iv)]. The goods that are available (24,000 kg) are liable to confiscation.
2. **Section 9(1) of the CGST Act read with Section 5(1) of the IGST Act** - non-payment of IGST of Rs.22,93,200/- on the 14,000 kg resold to M/s BBB Traders, Ludhiana (inter-State supply). The Company is the supplier on these sales and therefore the person chargeable with the tax.
3. **Section 31(1) read with Rule 46 and Section 68 read with Rule 138** - non-issue of tax invoices on the resale, and carriage of the goods without e-way bill; **Section 35(1) read with Rule 56** - the purchase and stock of the goods were not entered in the books of account; **Section 28(1) read with Rule 19** (and Section 25) - failure to declare the godown as an additional place of business; **Sections 37 and 39** - the outward supplies were not reported and the tax was not paid.
4. **Section 122(1)(xviii)** - the Company stored (and supplied) goods which it had reasons to believe were liable to confiscation. **Section 122(3)(b)** - Mr. Z and Mr. P acquired possession of, or in any way concerned themselves in transporting, removing, depositing, keeping, concealing, supplying or purchasing, or in any other manner dealt with, the goods which they knew or had reasons to believe were liable to confiscation.

Note: *The element of 'knowledge or reasons to believe' is the heart of this case and is not to be assumed. It is built, one fact at a time, from: (a) the price, Rs.100 per kg (11%) below the market rate certificate, and in cash; (b) delivery between 01:00 and 04:00 hours, by the supplier's trucks and not by a transporter with an e-way bill; (c) storage in a godown not in the registration and in the wife's name; (d) no entries in the books, and instruction 'not to enter anything in the computer'; (e) cash withdrawn in the days before each delivery and the UPI payment to the dispatch clerk and not to the company; (f) resale without bill at a higher price; (g) Mr. Z's own statement that 'without bill the maal is not clean'; and (h) the independent evidence of the GPS/FASTag and the CCTV, which does not depend on his statement and survives its retraction.*

B. CONSEQUENCES OF CONTRAVENTION OF LEGAL PROVISIONS

The contraventions expose the Noticees to the following action under the CGST Act, 2017, read with the corresponding provisions of the IGST Act, 2017 and the HGST Act, 2017:

1. Who owes the tax? (supplier versus recipient) - the tax on the supply by AAA to the Company (38,000 kg) is payable by AAA, the supplier, and is to be demanded in the case against AAA at Ghaziabad (Exercise 31 and Exercises 24 to 26 are the nearest earlier models, in which the unregistered supplier and the carrier were the target). The Company, as recipient, has no liability for that tax merely because it purchased without invoice: Section 9(4), the reverse charge on supplies from an unregistered person, does not apply to a supply by a registered person (AAA is registered). The Company is liable to tax only on its own supplies: the 14,000 kg resold to BBB without invoice, taxable value Rs.1,27,40,000/-, IGST Rs.22,93,200/-.
2. Demand and limitation - IGST of Rs.22,93,200/- under **Section 74A(1) of the CGST Act read with Section 20 of the IGST Act**. The supplies were made in February and March 2026 (FY 2025-26), so Section 74A is the demand provision [Section 74A(12)]; the annual return for FY 2025-26 is due on 31.12.2026, so the notice may be issued up to 30.06.2030 [Section 74A(2)]; the order must be passed within twelve

months of the notice [Section 74A(7)], extendable by six months.

3. Interest - under **Section 50(1)** at 18% per annum on the IGST: February 2026 supplies from 21.03.2026 and March 2026 supplies from 21.04.2026 till payment. Up to 30.11.2026 the interest is Rs.2,68,344/-, as worked out in the table below.

4. Penalty under Section 74A(5)(ii) - equal to the tax, Rs.22,93,200/-, on the Company, because the non-payment was by suppression of facts to evade tax: the Company purchased in cash, sold without invoice, kept no books, did not tell the department of the godown and routed the cash through Mr. K and the cash-credit account. The concessions of Section 74A(9) (15% of the tax before the notice, 25% within 60 days of the notice and 50% within 60 days of the order, with the tax and interest) are available.

5. Confiscation under Section 130 - 24,000 kg of copper wire (market value Rs.2,11,20,000/-) seized on 02.04.2026 is proposed for confiscation under **Section 130(1)(i), (ii) and (iv)**. Intent to evade payment of tax is the ingredient that separates Section 130 from Section 129 (which applies to goods detained in transit and requires no intent; Exercises 23 to 27). Here the goods are not in transit but lying in the godown, there was no detention under Section 129, and the whole basis of the notice is the intent shown at (a) to (h) above. Confiscation is not a substitute for the demand: Section 130 and Section 74A operate on different goods in this notice (the resold goods are taxed, because they are gone; the available goods are confiscated).

6. Redemption fine - Section 130(2): an option to pay a fine in lieu of confiscation, not exceeding the market value less the tax chargeable, i.e. Rs.2,11,20,000/- less Rs.38,01,600/- = Rs.1,73,18,400/-; and the aggregate of the fine and the penalty leviable must not be less than the penalty leviable under Section 129(1) [per the Master Chart, 200% of the tax on the goods, i.e. Rs.76,03,200/-]. The penalty under Section 122(1)(xviii) is proposed at Rs.38,01,600/-; the fine therefore must be at least Rs.38,01,600/-, and Rs.40,00,000/- is proposed (about 19% of the market value). Under Section 130(3), on payment of the fine, the owner remains liable to tax, penalty and charges in respect of the goods; the tax on the 24,000 kg is being demanded from AAA, and will be taken into account before release so that there is no double recovery. On confiscation the goods vest in the Government [Section 130(5)]; no order can be made without a hearing [Section 130(4)].

7. Penalties - (a) **Section 122(1)(xviii)** on the Company: the penalty is the higher of Rs.10,000 or the tax evaded, i.e. Rs.38,01,600/-, the tax chargeable on the goods stored; since the tax was evaded by the consignor, the measure may be challenged and the adjudicating officer should record why this is the appropriate equivalent. (b) **Section 122(3)(b)** on Mr. Z and on Mr. P separately: penalty which may extend to Rs.25,000/- each; proposed at the maximum because the acts of both were deliberate. (c) Section 75(13) - the penalty under Section 74A(5)(ii) (non-payment of tax on the resale) and the penalty under Section 122(1)(xviii) (storing goods liable to confiscation) are for different acts, and are on different goods, so neither is a double penalty; Section 122(1)(i) and (xiv) for the resale are not separately invoked, as they are covered by the same act as Section 74A(5)(ii).

8. Attachment and recovery - the attachment of the bank account under Section 83 (order dated 10.04.2026) ceases to have effect after one year [Section 83(2)], i.e. on 10.04.2027, unless the proceedings conclude earlier; recovery under Sections 78 and 79 if the confirmed amounts are not paid. The goods are held under seizure since 02.04.2026; if no notice were issued within six months of seizure (by 02.10.2026) the goods would have to be returned [Section 67(7)], unless the period is extended by the proper officer by six months on sufficient cause; here the extension order dated 25.09.2026 is on record, and the notice (dated in November 2026) is within the extended period, i.e. before 02.04.2027.

9. Prosecution - Section 132(1)(h) - the offence under clause (h) (acquiring possession of, or dealing in, goods which the person knows or has reasons to believe are liable to confiscation) is considered. The punishment depends on the amount of tax involved: more than Rs.5 crore (imprisonment up to five years), more than Rs.2 crore up to Rs.5 crore (up to three years), more than Rs.1 crore up to Rs.2 crore (up to one year) [Section 132(1)(i) to (iii)]. The tax involved in all 38,000 kg at the market value of Rs.3,34,40,000/- is Rs.60,19,200/- (IGST on the resold goods Rs.22,93,200/- plus Rs.38,01,600/- on the goods seized, valued at the market price), which does not exceed Rs.1 crore, the lowest threshold. Prosecution is therefore not proposed; and the offence being non-cognizable and bailable [Section

132(4)], no arrest arises. Previous sanction of the Commissioner is needed for any prosecution [Section 132(6)].

Illustrative working of the tax, interest and fine proposed:

Date of resale	Qty (kg)	Value at Rs.910/kg (Rs.)	IGST 18% (Rs.)	Due date (month)	Days to 30.11.2026	Interest 50(1) at 18% (Rs.)
25.02.2026	6,000	54,60,000	9,82,800	20.03.2026 (February 2026)	255	1,23,590
15.03.2026	8,000	72,80,000	13,10,400	20.04.2026 (March 2026)	224	1,44,754
TOTAL	**14,000**	**1,27,40,000**	**22,93,200**			**2,68,344**

Head	Basis	Amount (Rs.)
Tax - 74A(1)	IGST on 14,000 kg resold	22,93,200
Penalty - 74A(5)(ii) (Company)	Equal to the tax	22,93,200
Penalty - 122(1)(xviii) (Company)	Tax chargeable on the 24,000 kg stored	38,01,600
Redemption fine - 130(2) (Company)	Proposed; limit Rs.1,73,18,400; floor with penalty Rs.76,03,200	40,00,000
Penalty - 122(3)(b), Mr. Z	Up to Rs.25,000	25,000
Penalty - 122(3)(b), Mr. P	Up to Rs.25,000	25,000

Basis: *The resale price (Rs.910 per kg) is the price at which BBB bought, supported by its diary and UPI receipts; the tax is taken as additional to this price only if the Company shows that the price was cum-tax; in that case the benefit of cum-tax valuation should be considered at adjudication. The market value is taken from the Association's certificate (Rs.880 per kg). Interest runs from the day after the due date of GSTR-3B (20th of the following month) to 30.11.2026, actual days/365.*

C. CHARGING PARAGRAPH OF THE SHOW CAUSE NOTICE

[The following is the operative charging paragraph proposed for incorporation in the Show Cause Notice at Part D below.]

Now, therefore, M/s XXX Metals Pvt. Ltd., YYYY, Panipat, Haryana (the Company), Mr. Z, Director of the Company, and Mr. P, godown in-charge, are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division, Panipat, within thirty (30) days of the receipt of this notice, as to why:

(i) the 24,000 kg of copper wire (market value Rs.2,11,20,000/-) seized on 02.04.2026 from the godown at Samalkha Road, Panipat, should not be confiscated under Section 130(1)(i), (ii) and (iv) of the CGST Act, 2017/HGST Act, 2017, and why an option to pay a fine of Rs.40,00,000/- in lieu of confiscation under Section 130(2) should not be given to the Company;

(ii) IGST of Rs.22,93,200/- on the 14,000 kg of copper wire supplied inter-State to M/s BBB Traders, Ludhiana, without invoice, e-way bill or payment of tax (taxable value Rs.1,27,40,000/-), should not be demanded and recovered from the Company under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(iii) interest at 18% under Section 50(1) should not be charged and recovered on the tax at (ii) above, from 21.03.2026 on Rs.9,82,800/- and from 21.04.2026 on Rs.13,10,400/-, till the date of payment;

(iv) a penalty of Rs.22,93,200/-, being equal to the tax, should not be imposed on the Company under Section 74A(5)(ii) of the CGST Act, 2017/IGST Act, 2017 (without prejudice to the benefit of

Section 74A(9));

(v) a penalty of Rs.38,01,600/- should not be imposed on the Company under Section 122(1)(xviii) of the CGST Act, 2017/HGST Act, 2017, for storing and supplying goods which it had reasons to believe were liable to confiscation;

(vi) a penalty of Rs.25,000/- each should not be imposed on Mr. Z and on Mr. P under Section 122(3)(b) of the CGST Act, 2017/HGST Act, 2017.

D. DRAFT SHOW CAUSE NOTICE

F. No. GEXCOM/ADJN/SCN/[●]/2026-PANIPAT

DIN: [Document Identification Number to be auto-generated on issue]

Office of the Deputy/Assistant Commissioner, CGST Division - Panipat, [Commissionerate], Haryana

Date: [●].11.2026

SHOW CAUSE NOTICE

(Issued under Sections 74A, 122 and 130 of the Central Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017 and the corresponding provisions of the Haryana Goods and Services Tax Act, 2017)

To,
1. M/s XXX Metals Pvt. Ltd., YYYY, Panipat, Haryana;
2. Mr. Z, Director of M/s XXX Metals Pvt. Ltd., [residential address], Panipat;
3. Mr. P, godown in-charge, Samalkha Road, Panipat.

(hereinafter referred to as 'the Company', 'Mr. Z' and 'Mr. P', and collectively 'the Noticees')

WHEREAS M/s XXX Metals Pvt. Ltd. is a registered person in Haryana trading in non-ferrous scrap and wire from YYYY, Panipat, and holds, with Mr. P as in-charge, a godown at Plot No. [●], Samalkha Road, Panipat, which is not shown in its registration (RUD-9);

2. AND WHEREAS in a search of the factory of M/s AAA Cables Pvt. Ltd., Ghaziabad, on 30.03.2026 a dispatch diary of Mr. K (RUD-2) recorded five lots of bare copper wire (HSN 7408), totalling 38,000 kg, sent between 14.02.2026 and 24.03.2026 to 'PNP-Z' at 'rate Rs.780', 'cash received'; Mr. D, Director of AAA, stated on 31.03.2026 (RUD-3) that AAA sold the 38,000 kg to Mr. Z without invoice and e-way bill, in cash, at Rs.780 per kg against the market price of Rs.880 per kg, delivered by AAA's trucks at night to the Samalkha Road godown;

3. AND WHEREAS the GPS data of the five trucks and the FASTag records of the toll plaza (RUD-4) show the trucks crossing between 01:05 and 02:40 hours and reaching the Samalkha Road godown between 02:15 and 03:50 hours on 14.02.2026, 21.02.2026, 02.03.2026, 12.03.2026 and 24.03.2026, and the CCTV footage of the godown (RUD-5), with the certificate under the law relating to electronic evidence, shows the unloading of the same trucks between 02:10 and 04:00 hours, with Mr. P present on all nights and Mr. Z on three nights;

4. AND WHEREAS on 02.04.2026 the godown was searched under Section 67(2) on the written authorisation of the Joint Commissioner, and 24,000 kg of bare copper wire, weighed on a calibrated weighbridge and not recorded in any invoice, e-way bill, stock register or return, was seized by an order in FORM GST INS-02 dated 02.04.2026 (RUD-1); the books of account and the GSTR-3B of the Company for February and March 2026 show no purchase or stock of such goods (RUD-9);

5. AND WHEREAS Mr. P in his statement dated 03.04.2026 (RUD-6) stated that he opened the godown at night on the instructions of Mr. Z, kept a rough diary and was told not to enter anything in the computer; and Mr. Z in his statement dated 06.04.2026 (RUD-7) stated that he bought the copper wire in cash at Rs.780 per kg without bill because the price was lower by about Rs.100, arranged night delivery to avoid the department, knew that supply without bill was not legal, took the godown on rent in his wife's name without telling the department, and resold 14,000 kg to M/s BBB Traders, Ludhiana, at about Rs.910 per kg without bill, the balance being the seized stock; the retraction dated 28.04.2026 gives no particulars and is contradicted by the independent evidence at RUD-4, RUD-5, RUD-8 and RUD-10;

6. AND WHEREAS the bank statements of the Company (RUD-8) show cash withdrawals of Rs.2,75,00,000/- in the days before the five deliveries and UPI transfers of Rs.21,40,000/- to Mr. K, a total of Rs.2,96,40,000/-, equal to 38,000 kg at Rs.780 per kg; the market rate certificate dated 20.04.2026 of the Panipat Metal Merchants Association (RUD-10) shows the price of Rs.880 per kg; and the statement of M/s BBB Traders dated 15.04.2026, with its purchase diary and UPI receipts (RUD-11),

shows that 6,000 kg was bought on 25.02.2026 and 8,000 kg on 15.03.2026 at Rs.910 per kg without invoice, total value Rs.1,27,40,000/-;

7. AND WHEREAS it appears that the price paid (about 11% below the market), the payment in cash, delivery at night by the supplier's own trucks without e-way bill, the storage in an undeclared godown in the wife's name, the absence of any entry in the books, and the admissions of Mr. Z and Mr. P, show that the Company, acting through Mr. Z and Mr. P, knew or had reasons to believe that the goods were supplied in contravention of the Act and Rules with intent to evade tax, and were liable to confiscation under Section 130(1)(i), (ii) and (iv); that the Company received and did not account for the goods; and that the goods available are 24,000 kg of market value Rs.2,11,20,000/-, on which tax is Rs.38,01,600/-;

8. AND WHEREAS the tax on the supply by AAA to the Company is payable by AAA and is proceeded against separately at Ghaziabad, and no tax is demanded from the Company on the goods it purchased; however, the Company, having supplied 14,000 kg of the goods to M/s BBB Traders, Ludhiana, without invoice, e-way bill, payment of tax or return, is liable to IGST of Rs.22,93,200/- (taxable value Rs.1,27,40,000/- at 18%) as per Annexure-A; and the non-payment of tax appears to be by suppression of facts with intent to evade tax;

9. AND WHEREAS it thus appears that the Company has contravened Sections 9(1), 28(1), 31(1), 35(1), 37, 39, 68 and 130(1)(i), (ii) and (iv) of the CGST Act, 2017 and Section 5(1) of the IGST Act, 2017 and Rules 19, 46, 56 and 138, and is liable to demand under Section 74A, interest under Section 50(1), penalty under Section 74A(5)(ii) and Section 122(1)(xviii), and confiscation with the option of a fine under Section 130; and that Mr. Z and Mr. P, who acquired possession of and dealt with the goods knowing or having reasons to believe that they were liable to confiscation, are liable to penalty under Section 122(3)(b);

NOW, THEREFORE

the Noticees are hereby called upon to show cause in writing to the Deputy/Assistant Commissioner, CGST Division - Panipat, within thirty (30) days of the receipt of this notice, as to why:

(i) the 24,000 kg of copper wire (market value Rs.2,11,20,000/-) seized on 02.04.2026 from the godown at Samalkha Road, Panipat, should not be confiscated under Section 130(1)(i), (ii) and (iv) of the CGST Act, 2017/HGST Act, 2017, and why an option to pay a fine of Rs.40,00,000/- in lieu of confiscation under Section 130(2) should not be given to the Company;

(ii) IGST of Rs.22,93,200/- (Rupees Twenty-Two Lakh Ninety-Three Thousand Two Hundred only) on the 14,000 kg of copper wire supplied inter-State to M/s BBB Traders, Ludhiana, without invoice, e-way bill or payment of tax (taxable value Rs.1,27,40,000/-), should not be demanded and recovered from the Company under Section 74A(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

(iii) interest at 18% under Section 50(1) of the CGST Act, 2017/IGST Act, 2017 should not be charged and recovered on the tax at (ii) above, from 21.03.2026 on Rs.9,82,800/- and from 21.04.2026 on Rs.13,10,400/-, till the date of payment;

(iv) a penalty of Rs.22,93,200/-, being equal to the tax, should not be imposed on the Company under Section 74A(5)(ii) of the CGST Act, 2017/IGST Act, 2017 (without prejudice to the benefit of Section 74A(9));

(v) a penalty of Rs.38,01,600/- should not be imposed on the Company under Section 122(1)(xviii) of the CGST Act, 2017/HGST Act, 2017;

(vi) a penalty of Rs.25,000/- each should not be imposed on Mr. Z and on Mr. P under Section 122(3)(b) of the CGST Act, 2017/HGST Act, 2017.

10. The Noticees are further informed that:

- a written reply, with all documents relied upon, must be furnished within thirty (30) days of receipt of this notice, failing which the case will be decided ex parte on merits;
- an opportunity of personal hearing will be granted before adjudication [including under Section

130(4)], on a date to be separately intimated;

- attention is drawn to Section 74A(9): if the tax, interest and 15% penalty are paid before issue of this notice, no notice shall be served; if paid with 25% penalty within sixty (60) days of issue, or with 50% penalty within sixty (60) days of the order, the proceedings against the Company are concluded, and the proceedings under Section 122 against the other Noticees in this notice are deemed concluded, subject to Explanation 1 to Section 74A; this does not cover the confiscation under Section 130 or prosecution under Section 132;
- the goods are in the custody of the Company under supratnama and may not be moved or dealt with; the provisional attachment under Section 83 continues until the date specified in the order;
- this notice is issued without prejudice to any other action under the CGST Act, 2017/IGST Act, 2017/HGST Act, 2017 or any other law, including prosecution, against the Noticees or any other person.

List of Relied Upon Documents (RUDs):

RUD-1: Search authorisation of the Joint Commissioner, panchnama, weighment slip and seizure order in FORM GST INS-02 dated 02.04.2026; extension order under Section 67(7) dated 25.09.2026;

RUD-2: Search panchnama dated 30.03.2026 at AAA, Ghaziabad, with the dispatch diary of Mr. K (pages with entries 'PNP-Z');

RUD-3: Statement of Mr. D dated 31.03.2026;

RUD-4: GPS reports of the five trucks and FASTag statements of the toll plaza;

RUD-5: CCTV footage of the godown (DVR) with certificate of the person in charge under the law relating to electronic evidence;

RUD-6: Statement of Mr. P dated 03.04.2026 and the 'rough diary';

RUD-7: Statement of Mr. Z dated 06.04.2026 and the retraction letter dated 28.04.2026;

RUD-8: Bank statements of the Company's cash-credit account and of the UPI transfers to Mr. K;

RUD-9: Registration certificate of the Company, its books, stock register and GSTR-3B for February-March 2026, and the rent agreement of the godown;

RUD-10: Market rate certificate dated 20.04.2026 of the Panipat Metal Merchants Association;

RUD-11: Statement of Mr. B of M/s BBB Traders dated 15.04.2026, with purchase diary and UPI receipts;

RUD-12: Order in FORM GST DRC-22 dated 10.04.2026;

Annexure-A: Lot-wise statement of purchases and resales, and calculation of tax, interest, fine and penalties [as per the tables in the Situation and Part B].

(_____)
Deputy/Assistant Commissioner, CGST
Division - Panipat, [Commissionerate]

Copy to: The Additional/Joint Commissioner, CGST, for information; the Commissioner, CGST Ghaziabad, for information in the case of M/s AAA Cables Pvt. Ltd.

Drafting note (not part of the notice):

- *The addressees, jurisdictional office/officers, F. No./DIN, dates, plot numbers and the Commissionerate shown in square brackets/blanks are illustrative placeholders and must be completed with the correct particulars before issue. The facts are fictional. The rate of 18% for HSN 7408 was taken from a secondary source and should be confirmed from the rate notification (as amended on 22.09.2025) before issue. The Association and the toll plaza are placeholders.*
- ***Teaching point 1 - 'knowledge or reason to believe'.*** *Sections 122(1)(xviii), 122(3)(b) and 132(1)(h) all turn on the state of mind of the dealer. A purchase without invoice is not itself proof of it. It is proved from*

the combination of circumstances (price, cash, night delivery, undeclared godown, no entries, payment route) and, importantly, from evidence that does not depend on a statement that may be retracted: GPS/FASTag, CCTV, bank trail, the consignor's diary and the buyer's records. Section 130 requires, in addition, intent to evade tax, which the notice must plead and not presume.

- ***Teaching point 2 - supplier versus recipient.*** *The tax on the clandestine supply is payable by the supplier (the consignor's case at Ghaziabad); the recipient pays tax only on his own supplies, here the resold 14,000 kg, while the unsold goods are confiscated. Compare Exercise 31 (unregistered seller, tax demanded from the seller) and Exercises 24 to 26 (goods intercepted in transit under Section 129/130, with the consignor/consignee). Section 130 (intent to evade, goods lying in stock) is distinguished from Section 129 (detention in transit, no intent required). A Section 130 case can be made against a recipient who was not in transit.*
- ***Route and fraud.*** *Fraud/suppression is pleaded for the resale (Section 74A(5)(ii)) from the evidence discussed in the notice, not from the statement alone (compare Exercises 49 and 52). Section 132(1)(h): the tax involved (Rs.60.19 lakh on all 38,000 kg at the market price) is below Rs.1 crore, the lowest threshold in Section 132(1); the Master Chart maps clause (h) to tiers (i) to (iii) but describes tier (iii) as for clause (b) only, whereas the Act (as read from a secondary source) applies tier (iii) to 'any other offence', which would also reach clause (h). The result is the same on these figures.*
- ***Penalty under Section 122(1)(xviii).*** *The Act gives Rs.10,000 or the tax evaded, whichever is higher, for the clauses of Section 122(1), whereas the Master Chart (Template IX) gives 'up to Rs.25,000'; the figure of Rs.25,000 is the maximum under Section 122(3). The adjudicating officer may consider whether the 'tax evaded' for the Company is nil (the consignor evaded it), in which case the minimum of Rs.10,000 would apply; the notice proposes the higher measure and leaves it to the reply.*
- *The draft should be settled by the jurisdictional officer before issue, including the issuing/adjudicating authority under Circular No. 31/05/2018-GST dated 09.02.2018 (Superintendent: central tax up to Rs.10 lakh; Deputy/Assistant Commissioner: above Rs.10 lakh up to Rs.1 crore; Additional/Joint Commissioner: above Rs.1 crore). The IGST demand here is Rs.22,93,200/- and the tax on the goods to be confiscated Rs.38,01,600/-, so the Deputy/Assistant Commissioner issues the notice; the treatment of confiscation under the Circular's limits is to be confirmed.*
- *Return of non-RUDs (Non-Relied Upon Documents): When the SCN is issued to the taxpayer in the form of DRC-01 (uploaded on the portal if registered, as well as delivered as per the provisions of law), non-RUDs must be returned to the noticee under due acknowledgement within seven days of issuance of the SCN.*

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