

How to Draft Good Show Cause Notice: Some Tips

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How to draft Goods SCN: Some Tips

Show Cause notice (SCN) is the culmination of our efforts from the beginning of investigation/proceedings for contravention of provisions of the tax statute(s) till conclusion of investigation /proceeding by way of formal issuance of a written notice to the noticee (s). Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action (civil proceeding) to be taken for contravention of provisions of Customs/Central Excise/Service tax laws and/ or Allied Laws, which are required to be enforced by our departmental officers.

It is the most important item of our work and any lapse in timely issuance of SCN or issuing SCN of poor quality may lead to serious trouble to the officer concerned. Since, it is the starting point of any legal proceeding, utmost care is required to be taken while drafting SCN.

For convenience of understanding, the SCN can be broadly divided in several parts- each part dealing with a specific aspect of SCN. The several parts, into which an SCN can be broadly divided and the specific aspect dealt by each part, are as under:-

Part I:

In this part, we discuss the background as to how the present proceeding started. It may be differ from case to case. A case may be based on intelligence, audit, discrepancies in documents noticed during scrutiny, reference received from other department /DRI/DGCEI/Vigilance/Audit etc. In this part, we basically mention gist of intelligence/audit objection/ observation/ communication received from other department /organization, name of the unit/ importer/ exporter/ dealer/assessee etc. and a brief modus operandi of duty evasion adopted by the alleged offender. The details given in this para should be sufficient enough to justify further investigation/Inquiry.

Part-II:

In this part, after receipt of intelligence/inputs/reference which, prima facie indicating evasion of duty, or violation of any provision of Customs/Central Excise/Service Tax law, further action carried out by the department is discussed.

- The action could be, by way of conducted searches, collecting further relevant information from other sources including other department etc.
- In cases where searches have been carried out, details of the premises searched and outcome of such searches have to be mentioned in this part of SCN. If statement of any person, who is materially important for the investigation/inquiry, has been recorded, then relevant portions of such statement have to be captured/discussed in the SCN. Wherever letters have been addressed to Bank /other Government Department, other manufacturer /dealer etc., the various actions taken by the Department/consequent outcome thereof, have to be discussed in this part. If any computer has been recovered, the details of examination of such computer by expert and recovery of incriminating documents, if any, have to be mentioned in this part.
- Panchnama of premises searched, statements recorded, summon issued, any incriminating documents recovered and being relied upon, etc. have to be made as 'RUD'. As far as possible, incriminating documents recovered during searches, or obtained from other authorities and being used as relied upon documents, should be shown to the concerned person (s) during recording of statement (under Section 108 of the Customs Act, 1962/ Section 14 of the Central Excise Act) and his/her explanation should be obtained during recording of statement.

Part-III: In this part, further course of action taken to pursue inquiry/ investigation further, has to be discussed.

- (i) If any goods are seized and later released provisionally, then such details are discussed here.
- (ii) If any sample is sent for testing, then the outcome of such testing has to be mentioned.
- (iii) If any arrest is made, then details of arrest and subsequent development thereof, have to be mentioned in this part.
- (iv) If any court proceeding (such as for non-compliance of summons etc.) takes place, brief of such Court proceeding have to be discussed here.
- (v) Differential duty recoverable and its calculation may also be worked out in this part.

Part IV: Summary of Investigations.

Now, after conducting searches, recording statements, conducting market inquiries/ testing of samples, seizure/ or provisional release of goods etc., the story-line, which emerges, has to be summarized in this part.

Part V: Relevant legal provisions: In this part, we discuss the relevant legal provisions in the form of Sections/ Rules/ Notification/Circular/Department Instruction etc. which are relevant to this case.

Part VI: In this part, the act of noticee (s) *vis-a-vis* legal requirements is discussed, thereby, discussing contravention of various statutory provisions as well. Role played by each person and contravention of specific provision of the Act by the person should also be discussed. This would be required for imposition of personal penalty on the individuals who, by their acts of omission or commission, resulted in evasion of duty/ contravention of provisions of law.

Wherever extended period of five years for demand of duty/tax is invoked, then justification for such extended period of limitation should be clearly

mentioned in the show cause notice. Whether there is fraud, or suppression of fact, or deliberate contravention of provisions of the Act, has to be clearly brought out in the SCN. Since invocation of extended period of limitation requires presence of *mens rea*, it has to be clearly explained/ discussed in this paragraph dealing with invocation of extended period of limitation. Evidence, if any, which may help in establishing *mens rea* on part of alleged offender may also be mentioned here.

Part VII: Charging Paragraph- In this part, the noticee is asked to show cause against the adverse actions which are proposed to be taken by the Department. This paragraph also mention as to whom (Designation of authorities and its office address) the SCN is answerable. In this paragraph, depending upon the facts of the case, the following course of actions may be proposed by the Department:-

- Proposing confiscation of seized goods, demand of duty/tax along with interest, recovery of duty/interest from pre-deposits if any, imposition of penalty on the party as well as individuals including transporter/CHA and Officers. Relevant sections of the Central Excise Act/finance act, 1944 /Customs Act etc. should also be mentioned. For example, for demanding Central Excise duty short paid/not paid, section 11A of Central Excise Act, 1944, must be mentioned. For demand of interest, relevant section providing for demand and recovery of interest should be mentioned. Similarly, section under which penalty is proposed to be imposed, should be clearly mentioned.
- For deciding the competent adjudicating authority, relevant instructions/ Circulars issued by CBEC from time to time specifying monetary limits for different levels of adjudicating authority may be referred to. Such instructions for Central Excise, Customs and Service tax are different; therefore, the relevant instructions /Circulars may be carefully seen.

[Note: While drafting this part, we should clearly decide as to who is the adjudicating authority (designation-wise, not name-wise) for the SCN is and it should be mentioned in the SCN. Office address of adjudicating authority should be mentioned in this Para. Further, from the reading of this Para, it should appear as a kind of allegation, rather than definite conclusion; in other words, it should start with “ From the foregoing, it appears that ...”}

[Note: Quantification of demand and basis (in the form of documents/balance sheets etc.) on which it has been worked out, should be explained in the SCN]. Any document such as balance sheet/ or documents/email etc. recovered from computer/ during search proceeding should be made RUDs to the SCN.

Part VIII: Three Standard Paragraphs, which are common to all SCNs. In these paragraphs, following aspects are discussed: –

- Asking noticee to furnish written submission within 30 days of the receipt of SCN.
- Informing him that in case of failure to submit reply within prescribed period, the SCN will be decided Ex-parte.
- Asking him to submit documents/evidence in support of his contention/ defence.
- Noticee is asked to indicate in writing as to whether he/she want personal hearing.
- The present show cause notice is without prejudice to any other action, which may be taken under the same Act or any other Act for the time being in force.
- If there is any exception/limitation, the same can be mentioned in this paragraph.

Part IX: List of Relied upon Documents (RUDs) and to enclose legible copies of RUDs. The RUDs should be numbered serially (starting from 1 till last number). Each RUD should be given a specific number (as RUD-1, or RUD-2 etc.) and it's position in the complete set of RUDs (by way of page number(s)) should be mentioned.

The copy of documents enclosed should be legible. While listing any document as RUD, the complete document should be enclosed rather than enclosing some specific pages (which are relevant for your investigation) of documents. Sometime, officer encloses only relevant pages of agreement/ contract/ balance sheet etc., which is a wrong practice.

When a statement recorded has been made RUD, then, if any evidence, recovered/obtained during investigation has been shown to the person at the time of recording of his statement and got signed in token of having seen and perused the documents, then such documents /evidence should also be treated as an integral part of the statement.

Since only copies of RUDs are given to the noticee along with SCN, an option should be given to the noticee to inspect original RUDs during official working hours of any working day. In case, the noticee choose to inspect the original documents, a record of this exercise should be kept in the file and signature of the noticee having seen the original and convinced himself should be taken.

Part X: Care should be taken to mention all noticees to whom the notice is to be served. The name and address of these noticees should be clearly and correctly mentioned. Sometime, despite the role of person been discussed in the SCN, he is not made noticee to the Show Cause notice. Such lapses should be avoided. Similarly, it should be noted that the company and individual are different and both should be made separate noticees (except in the case of proprietary concern).

Part XI: Return of non-RUDs or seized computer if not required for further investigation or criminal proceedings.

The non-RUDs or seized computer should be returned to the person from whom such documents /computer were recovered. If possible, in the SCN itself, the concerned noticee may be given opportunity to take back non-RUDS/ computer etc.

Other important thing to be kept in mind while issuing SCN

- SCN to be issued with approval of the authority, who is competent to decide the same.
- To decide the level of adjudicating authority i.e. superintendent /AC/DC/JC/ADC/Commissioner, departmental instructions/Circular need to be carefully seen.
- Whether extended period of limitation is being invoked or not? if extended period of limitation has been invoked, grounds for invoking extended period of limitation should be clearly mentioned/explained in the SCN.
- What is the last date of issuance of SCN? It should be clearly indicated in the file being sent for approval of SCN.
- Where investigation in a case also involves violation of other allied laws which are administered by other departments, a copy of SCN should be sent to other departments also.
- Please also examine as to whether the case is fit for being referred to REIC (Regional Economic Intelligence Council), if the case also involves serious violation of other tax laws such as income tax or sale tax or it involves criminal act (punishable under Indian Penal Code such as

forgery of documents) aimed at causing serious loss of government revenue/money, which may be of interest to CBI/police.

- Whether the case is fit enough for launching criminal proceeding without waiting for adjudication of SCN. If so, then proceed further to launch prosecution against the offenders.

Checklist for the SCNs

- Whether noticee's name, Central Excise Registration No./ Service Tax Registration No./ IEC No in case of import/export has been mentioned along with complete address.
- Whether noticee is a manufacturer/dealer/service provider /service receiver /importer/ exporter/ warehouse owner/EOU/SEZ units, has been mentioned in the SCN.
- Whether noticee is proprietary concern/private limited/ public limited/body corporate etc. has been mentioned or not.
- Whether primary activity of the noticee mentioned. For example, in case of manufacturer, kind of goods manufactured or not etc.
- Whether gist of intelligence/information resulting in further inquiry/ investigation has been mentioned in the SCN or not.
- Whether grounds for invoking extended period of limitation has been clearly explained in the SCN.
- Whether quantification of duty being demanded has been explained in an unambiguous manner. The documents on which such duty calculation is based, is also clearly mentioned in the SCN and whether or not, the same has been made RUD to the SCN.

- Whether list of RUDs along with description of each RUD and page nos at which it is placed, is enclosed with SCN.
- Whether RUDs are legible and properly photocopied or not.
- Whether SCN has been approved by the Adjudicating authority who is competent to decide the same.
- Whether Non-RUDs have been returned or not. If not, then the same should be returned at the earliest after issuance of SCN.

The list of checks given above is only illustrative, not exhaustive.

Note: This write up has been attempted to help the departmental officers. This may not be a perfect write up and there is scope to improve it further. Any suggestion in this regard is welcome.