

AIFTP Eastern Zone in Association with All Odisha Tax Advocates Association and GST Research Foundation, New Delhi Presents

Handling GST Notices

for Non-Filing of GSTR-9 & 9C

Law, Risks & Remedies

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- 01 Legal Framework – Statutory Provisions
- 02 GSTR-9 vs GSTR-9C – Legal Nature & Distinction
- 03 Core Litigation Issues
- 04 Late Fee – Detailed Legal Analysis & Year-wise Waivers
- 05 Defence Strategy & Litigation Checklist
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SECTION 01

Legal Framework

1. Legal Framework – Statutory Provisions

Provision	Subject	Key Point
Sec 44 CGST	Annual Return	Mandates GSTR-9
Rule 80	Forms	Prescribes GSTR-9 & GSTR-9C
Sec 47	Late Fee	Applies to returns only
Sec 125	General Penalty	Residual penalty provision
Sec 46	Notice for Non-Filing	Applies to returns
Sec 61	Scrutiny	Applies to returns
Sec 73/74	Demand	Tax determination & limitation

SECTION 02

GSTR-9 vs GSTR-9C

Legal Nature

GSTR-9

Legal Nature: RETURN

Sections 46 & 47 applicable
Late fee chargeable
Scrutiny possible

GSTR-9C

Legal Nature: STATEMENT

Section 125 only
Late fee under Sec 47 NOT applicable
No scrutiny under Sec 61

⚠ KEY ARGUMENT: GSTR-9C ≠ Return → Late fee under Sec 47 NOT applicable to GSTR-9C

SECTION 03

Core Litigation Issues

"No recovery without adjudication"

DEFENCE ARGUMENTS

- Late fee is a civil consequence → requires determination
- No automatic recovery without adjudication order
- Opportunity of hearing is mandatory before recovery

ILLEGAL SHORTCUTS (Commonly Used)

Auto demand on portal X

Simple email / SMS X

Bulk notices without hearing X

3.2 – Whether GSTN Communication is Valid Demand?

INVALID

Portal Intimation

INVALID

Email / SMS

VALID

DRC-01

⚠ GSTN is NOT a 'Proper Officer' — GSTN communications carry NO legal enforceability

Legal Principle:

- Violates principles of natural justice
- No adjudication or quantification basis
- No prescribed format (DRC-01) used

LIMITATION PERIODS

Section 73 → 3 Years

Section 74 → 5 Years

Key Arguments

- If limitation expired: No tax can be demanded
- Non-filing notice cannot revive limitation period
- Indirect recovery barred when direct route is time-barred

Landmark Principle: "Indirect recovery barred when direct route time-barred"

- Once Sec 73/74 proceedings are time-barred, no proceedings can be initiated indirectly through non-filing notices
- Cannot reopen concluded years through the backdoor of annual return notices

Assessee Arguments

- Sec 61 meant for periodic/regular returns only
- No mechanism provided for annual return scrutiny
- Redundant with audit provisions under Sec 65/66

Revenue Arguments

- GSTR-9 is a return, hence scrutiny justified
- Consolidated data warrants scrutiny examination

Litigation Position: Strong arguable issue in favour of assessee — Sec 61 applicability to GSTR-9 is contestable

SECTION 04

Late Fee – Detailed Legal Analysis

₹100/day

CGST Late Fee

₹100/day

SGST Late Fee

**0.25% Turnover
(each)**

Maximum Cap

Applicability Matrix

Form	Late Fee Under Sec 47?
GSTR-9	YES – Applicable (It is a Return)
GSTR-9C	NO – Not applicable (It is a Statement)

Computation Formula

**Late Fee = ₹200/day × No. of Days
(Subject to cap of 0.50% of Turnover)**

6. Year-Wise Waiver / Reduction – Critical Defence

FY	Relief Type	Effective Impact	Notification
2017-18	Amnesty Scheme	Minimal late fee	Notif. 74/2018
2018-19	Reduced Fee Slabs	Substantial relief	Notif. 47/2019
2019-20	COVID Relief Scheme	Reduced burden	Notif. 79/2020
2020-21	Waiver / Lower Caps	Significantly reduced	Various Notifications

Late Fee capped at 0.50% (CGST + SGST) of Turnover | ⚠ Demand must consider all beneficial notifications

- Notification benefits must be applied retrospectively where beneficial
- Amnesty schemes override general late fee provisions — beneficial legislation must be interpreted liberally

SECTION 05

Defence Strategy & Procedure

7. Flow of Valid Demand vs Invalid Demand

Step	Valid Process ✓	Invalid Process ✗
Detection	By Proper Officer	System / Portal Auto-generated
Notice	DRC-01 (Prescribed Format)	Email / Portal Intimation
Hearing	Mandatory — Yes	Not provided — No
Order	Speaking Order passed	None / No Order
Recovery	Legal & Enforceable	Arbitrary & Unenforceable

LEGALLY CORRECT PROCESS:

Identify Default → Issue Notice (DRC-01) → Opportunity of Hearing → Speaking Order → Recovery

A. Jurisdiction

- Is the notice from a Proper Officer?
- Valid notice format (DRC-01)?

B. Limitation

- Has Sec 73/74 limitation period expired?

C. Nature of Demand

- Late fee vs Tax demand?
- Is demand for GSTR-9 or GSTR-9C?

D. Procedural Violations

- No hearing granted?
- No speaking order passed?

E. Substantive Grounds

- Waiver notifications applicable?
- No revenue loss demonstrated?

Para 1

Facts

State the factual background of the case and the notice received

Para 4

Invalid Notice

Establish notice is not in DRC-01 format; not issued by proper officer

Para 2

Legal Position

Establish legal standing: GSTR-9C is not a return; Sec 47 inapplicable

Para 5

Waiver Applicability

Apply beneficial notifications to reduce/eliminate late fee liability

Para 3

Limitation

Argue that Sec 73/74 limitation period has expired; proceedings time-barred

Para 6

Prayer

Request for dropping/quashing the notice with costs

SECTION 06

Case Laws Legal Precedents

Bharti Airtel Ltd. v. Union of India

Supreme Court

GST framework cannot be defeated by procedural rigidity. Substantive rights prevail over system limitations.

Use: Argue GSTN portal cannot create liability beyond statute

AAP & Co. Chartered Accountants v. UOI

Gujarat HC

GST portal errors cannot prejudice taxpayer. Technology is a facilitator, not the law itself.

Use: Strong defence against GSTN-generated notices

M/s Refex Industries Ltd. v. ACST

Madras HC

Late fee must be reasonable. Penal provisions cannot be excessive — proportionality applies.

Use: Challenge excessive late fee demands

M/s LC Infra Projects Pvt Ltd v. UOI

Karnataka HC

Recovery without adjudication is invalid. Due process is mandatory before any recovery action.

Use: Core defence against auto / arbitrary demands

Megha Engineering & Infrastructure Ltd.

Telangana HC

Key Principle:
Compliance obligations strict

Ratio: Compliance obligations are strict. Taxpayers cannot escape statutory filing requirements.

Union of India v. VKC Footsteps

Supreme Court

Key Principle:
Strict interpretation of GST

Ratio: Strict interpretation of GST scheme. Statutory provisions must be followed as enacted.

These cases support revenue: Compliance obligations strict | Statutory provisions strictly enforced

Anishia Chandrakanth v. Superintendent of Central Tax

Kerala HC, 2024

Levy of late fee on GSTR-9C is unjust and unsustainable. GSTR-9C is not a 'return'. Amnesty must be given full effect.

Use: Core case — GSTR-9C late fee challenge

Lakshmi Mobile Accessories v. STO

Madras HC, 2024

SCN covering multiple years is invalid. Proceedings must be conducted year-wise.

Use: Strong ground against bulk/multi-year notices

Sini Ramesh v. DC (Composite GST Proceedings)

Kerala HC, 2026

Each FY is a separate unit of assessment. Clubbing of years = violation of GST scheme.

Use: Annual return default notices

Bratin Sikder v. State of WB

Calcutta HC, 2025

Section 75(4) is mandatory. Hearing must specify date, time and venue — mechanical orders invalid.

Use: Use when order passed mechanically

Mall of Joy Pvt Ltd v. UOI

Kerala HC, 2024

Delay cured with late fee — cannot deny substantive compliance rights.

Use: Strong equitable argument for delayed filers

Aastha Enterprises v. State

Gujarat HC, 2023

Orders without proper opportunity of hearing are invalid and liable to be set aside.

Use: Procedural defect challenge

Aggarwal Dyeing & Printing Works v. State of Gujarat

Gujarat HC, 2022

Mechanical orders passed without due process are liable to be quashed by High Court.

Use: Natural justice violation — writ grounds

Batch of Writ Petitions (GSTR-9C late fee)

Kerala HC, 2024

Late fee demands quashed. Court emphasized equitable interpretation of waiver notifications.

Use: Supports amnesty-based defence

New Shivsakthi Traders v. AC

Madras HC, 2025

Late fee is valid even if GSTR-3A not issued. Liability survives procedural lapses.

Effect: Weakens procedural defence

Kandan Hardware Mart

Madras HC, 2026

Late fee valid — only Section 125 penalty removed. Department partially upheld.

Effect: Supports dept partially

Abdul Latheef v. AC

Kerala HC, 2026

Writ against SCN discouraged. Reply should be filed first before approaching Court.

Effect: Against premature writ filing

NKAS Services Pvt Ltd v. State of Jharkhand

HC, 2021

GST compliance is mandatory. Courts will not relax statutory requirements easily.

Effect: Strict compliance view

SECTION 07

Writ Petition Grounds & Advanced Arguments

Ground 1

Lack of Jurisdiction

Notice not issued by Proper Officer — GSTN has no quasi-judicial authority

Ground 2

Violation of Article 265

No authority of law for the demand — No tax can be levied without authority

Ground 3

Natural Justice

No opportunity of hearing granted — violates audi alteram partem principle

Ground 4

Limitation

Sec 73/74 time-barred — demand cannot be raised through backdoor proceedings

Ground 5

Ultra Vires Action

GSTN exercising quasi-judicial function without statutory authority — excessive delegation

Doctrine of Proportionality

Late fee demand must be proportionate to the actual non-compliance and revenue loss caused

Article 14 – Equality (Arbitrary Demand)

Arbitrary demands without basis violate right to equality under the Constitution

Article 265 – No Tax Without Authority of Law

No tax or penalty can be levied or collected except by authority of law

Excessive Delegation to GSTN

GSTN, a private company, cannot exercise quasi-judicial / statutory functions — ultra vires

01

Identify Notice Type

Portal / Email / DRC-01?

02

Check Limitation

Sec 73/74 expired?

03

Check Jurisdiction

Proper officer?
Format?

04

Apply Waiver

Beneficial
notifications?

05

Draft Reply

Structured legal
reply

06

If Adverse

Appeal / Writ
Petition

Aggressive (Litigation Mode)

- Challenge jurisdiction of notice
- Invoke constitutional grounds (Art. 14, 265)
- Deny all liability; contest at every stage

Balanced Approach

- Accept compliance lapse
- Seek benefit of waiver notifications
- Negotiate reduced late fee based on law

Settlement Mode

- Pay minimal late fee under amnesty scheme
- Obtain clean compliance certificate
- Close matter with minimum cost

SECTION 08

Final Strategic Position

#1

Limitation

Sec 73/74 time-barred — strongest ground; no proceedings can be initiated

#2

No Adjudication

No speaking order; recovery without determination is invalid

#3

GSTN Incompetence

GSTN is not a proper officer; its communications have no legal force

#4

9C Not a Return

GSTR-9C is a statement; Sec 47 late fee is legally inapplicable

#5

Waiver Notifications

Beneficial notifications reduce / eliminate late fee liability

Only Portal Notice / Reminder

**RISK:
LOW**

Action: Ignore or seek clarification in writing

Officer's Notice (Non-DRC Format)

**RISK:
MEDIUM**

Action: File detailed legal reply; contest jurisdiction

DRC-01 Issued

**RISK:
HIGH**

Action: Contest strongly with all available defences

Formula: Late Fee = ₹200 per day × No. of Days | Cap: 0.50% of Turnover (0.25% CGST + 0.25% SGST)

Turnover	Delay (Days)	Raw Late Fee	Cap Amount	Amount Payable
₹1 Crore	100 days	₹20,000	₹50,000	₹20,000
₹1 Crore	400 days	₹80,000	₹50,000	₹50,000 (capped)
₹5 Crore	200 days	₹40,000	₹2,50,000	₹40,000

Important Note: Late fee is automatically capped at 0.50% (CGST + SGST) of the taxpayer's turnover

- Notification benefits must be applied retrospectively where beneficial — beneficial legislation must be interpreted liberally
- Amnesty schemes override general late fee provisions — always check applicable notification for the relevant FY

"This issue, though procedural in appearance, raises fundamental questions of statutory interpretation under GST law."

The controversy primarily revolves around:

- Levy of late fee on GSTR-9C (reconciliation statement)
- Validity of notices issued under Sections 73 / 74 of CGST Act
- Impact of Amnesty Schemes and CBIC clarifications
- Conflict between judicial interpretation and departmental circulars

Types of Notices Issued

System-generated reminders

SCN under Section 73 / 74

Late fee recovery notices

Best Judgment Assessment (Sec 62)

Sec 44 CGST

Mandates filing of Annual Return (GSTR-9) and Reconciliation Statement (GSTR-9C)

Rule 80 CGST Rules

Prescribes form and manner of filing GSTR-9 and GSTR-9C

Sec 47(2) CGST

Provides late fee for failure to furnish returns
Critical question: Does 'return' include GSTR-9C?

Finance Act 2021 Amendment

Omitted Sec 35(5) (GST Audit) | Introduced self-certified GSTR-9C

Nature of GSTR-9 vs GSTR-9C – Extended Analysis

Particulars	GSTR-9	GSTR-9C
Legal Character	Annual Return	Reconciliation Statement
Covered under Sec 47	Yes	Disputed (Assessee View: NO)
Filing Requirement	Mandatory	Conditional (threshold-based)
Late Fee Applicability	Yes – Sec 47	No – Sec 125 only
Post Finance Act 2021	Self-filed return	Self-certified statement

Core Issue: Whether GSTR-9C can be equated with a 'return' for late fee purposes — Courts say NO; Department says YES

SECTION 10

Amnesty Schemes & CBIC Circulars

**Notification No. 07/2023
Central Tax
(31.03.2023)**

Waiver of late fee beyond Rs.10,000
Applicable for FY 2017-18 to 2021-22

**Notification No. 25/2023
Central Tax
(17.07.2023)**

Extended time limits under the
amnesty scheme
Promotes voluntary compliance

**CBIC FAQs on
Amnesty Scheme**

Relief intended to promote voluntary
compliance
Applies even where returns filed
belatedly

Notification benefits must be applied retrospectively | Amnesty schemes override general late fee provisions | Beneficial legislation must be interpreted liberally

- Doctrine of Legitimate Expectation: Government granted waiver — cannot penalize for same period
- Absence of Charging Provision: Section 47 applies only to 'returns' — not statements like GSTR-9C

Revenue-Oriented Interpretation — Strict Departmental Stand

1. GSTR-9 is incomplete without GSTR-9C

2. Late fee applies till BOTH GSTR-9 and GSTR-9C are filed

3. Additional late fee waived if GSTR-9C filed up to 31.03.2025

Courts	Department (Circular 2025)
GSTR-9C is not a return — no late fee	GSTR-9 incomplete without 9C — late fee continues
Amnesty to be interpreted liberally	Strict interpretation — deadline-based relief only
Late fee not leviable on 9C	Delay in 9C = incomplete compliance

Key Legal Position Emerging – Consolidated View

New Cases

Issue	Legal Position	Favour
Late Fee on GSTR-9	VALID – Sec 47 applies	Department
Late Fee on GSTR-9C	DISPUTED – Courts say NO	Taxpayer
Double Penalty (Late fee + Sec 125)	INVALID – Not permissible	Taxpayer
GSTR-3A absence	Not always fatal to dept case	Mixed
Multi-year single notice	INVALID – Year-wise required	Taxpayer
No hearing before order	INVALID – Sec 75(4) mandatory	Taxpayer
Non-compliance per se	Courts are strict	Department

Special Issue

Single Notice – Multiple Years

Legal Issue: Whether one notice can validly cover multiple financial years?

Ground	Assessee Argument
Separate Cause of Action	Each FY is independent — cannot be clubbed in one notice
Limitation	Different limitation periods apply for different FYs
Natural Justice	No year-wise adjudication possible in composite notice
Vagueness	No specific quantification of liability for each year

**Strong Argument: Composite notice is legally defective
Courts favour year-wise determination**

Revenue View: Administrative convenience | Common default pattern
— not accepted by courts

Key Cases: *Lakshmi Mobile Accessories (Madras HC, 2024)* | *Sini Ramesh v. DC (Kerala HC, 2026)* | *Pramur Homes (Karnataka HC)*

Financial Exposure

- Late fee Rs.200/day (subject to cap)
- Demand under Section 73 / 74
- Interest on delayed payment

Litigation Exposure

- Show Cause Notice proceedings
- Appeals up to High Court
- Potential Supreme Court involvement

Preventive Strategy

- Timely reconciliation of Books vs GST returns
- Maintain audit trail & working papers
- Use waiver windows proactively

Amnesty & Compliance Strategy

- Strategic Use of Amnesty: Evaluate eligibility before litigation — calculate cost of late fee vs litigation cost
- Documentation: Maintain working papers for reconciliation | Justification for differences between GSTR-9 and books
- Compliance Risks: Blocking of refunds | Increased audit scrutiny — file pending returns immediately to stop fee accrual

Courts (Pro-Taxpayer)

- GSTR-9C late fee unsustainable
- Natural justice is mandatory
- Amnesty must be liberally construed
- Multi-year notices are invalid

CBIC (Pro-Revenue)

- GSTR-9 incomplete without 9C
- Late fee continues till full filing
- Circular 246/2025 — strict deadline
- Compliance = filing BOTH forms

Supreme Court Resolution Awaited — Conflict between HC rulings and CBIC Circular 2025 likely to reach Apex Court

14. Conclusion – The Interpretational Conflict

- Conflict between: Statutory language (Section 47) vs Administrative expansion (Circular 2025)
- Stronger legal position currently lies with: Judicial interpretation | Amnesty-backed relief

Professional Presentation Guidelines

A. Opening

"This issue, though procedural in appearance, raises fundamental questions of statutory interpretation under GST law."

B. Delivery Structure

1. Law (Sec 44, 47) → 2. Issue (Late fee on 9C) → 3. Case laws → 4. Circular conflict → 5. Practical handling

C. Tone & Style

Use precise legal language. Avoid over-simplification. Maintain neutral, analytical tone throughout.

D. Handling Questions

Acknowledge Department circular, then: "However, judicial precedents have consistently held otherwise..."

F. Closing Line (Impactful)

"Ultimately, the controversy is not about compliance delay, but about the limits of delegated legislation vis-a-vis statutory charging provisions."

E. Key Emphasis Points for the Presentation

- 1 GSTR-9C is NOT a return**
Supported by Kerala HC, Gujarat HC and statutory interpretation of Sec 47
- 2 Amnesty schemes reflect legislative intent**
Notif. 07/2023 & 25/2023 — must be applied liberally and retrospectively
- 3 Circular cannot override statute**
Circular 246/2025 is binding on department, but cannot create liability beyond Sec 47
- 4 Each FY is a separate cause of action**
Multi-year notices are legally defective and vulnerable to challenge

Final Strategic Position

STRONG DEFENCE

- Limitation period (Sec 73/74) expired
- Only system/portal notice issued
- Demand without adjudication or order
- GSTR-9C involved (not a return)

MODERATE DEFENCE

- Valid notice but procedural defects
- Waiver notifications not considered
- No opportunity of hearing granted

WEAK DEFENCE

- Non-filing + valid DRC-01 adjudication
- Proper hearing conducted and order passed

This matter is: Highly Litigative | Strongly Defensible | Favourable to Taxpayers in Absence of Proper Proceedings

Thank You

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