

DEMANDS AND RECOVERY



The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 31.10.2024.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand the provisions relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised whether for any reason other than fraud or wilful-misstatement or suppression of facts, or otherwise.
- explain the consequences in case where tax is collected but not paid to Government.
- describe the provisions of tax wrongfully collected and paid to the Government.
- explain the recovery proceedings.
- elaborate the facility of payment of tax and other amount in instalments.
- identify the cases where the transfer of property is void.
- explain provisions relating to provisional attachment to protect revenue.



1. INTRODUCTION

Though it is the duty of every taxable person to assess and pay his GST liabilities voluntarily, tax administration occasionally comes across situations where the tax dues are not paid correctly by the taxpayers. While in most of these cases, such non-payment is due to the bonafide belief of the person that his activities do not attract any tax liability under the GST law; or he is entitled to certain exemption, etc., in some cases, such non-payment is deliberate with an intention to evade payment of such tax by way of short payment of tax, excess avilment of input tax credit, etc.

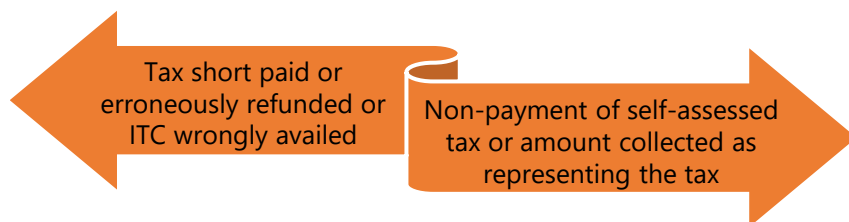
As per the relevant provisions, the self-assessed tax has to be paid by the due date prescribed under the GST law and any non-compliance may affect the Input Tax Credit (ITC) eligibility of the customers and also the tax payer will not be able to file any return for further period in certain circumstances. Effectually, these provisions work as a self-policing system and take care of any mismatch in the payment of taxes.



However, despite these provisions, there may arise some instances where the tax was not paid correctly. To deal with such situations, Revenue must be empowered to demand the tax liability and recover such tax from the defaulter.

On one hand, there is a dire need to have a robust demand and recovery mechanism in place in order to empower the Revenue to exercise said powers, at the same time, care must also be taken that there should not be arbitrary exercise of such powers by the Revenue and same should be appropriately regulated.

Accordingly, the GST law contains elaborate provisions for the recovery of tax under various situations, which can be broadly classified into following two categories:



Chapter XV of the CGST Act 2017 [Sections 73 to 84] and Chapter XVIII [Rules 142 to 161] of the CGST Rules, 2017 contains various provisions relating to demands and recovery. There are parallel provisions in SGST laws of various States. The demand and recovery proceedings will be made either by Central GST Officer or State GST Officer depending on their jurisdiction over particular taxable person.

Provisions of demands and recovery under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the demands and recovery provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- ❖ **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- ❖ **Appellate Tribunal:** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].
- ❖ **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- ❖ **Market value:** shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)].
- ❖ **Proper officer:** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board [Section 2(91)].



3. DETERMINATION OF TAX NOT PAID/ SHORT PAID/ ERRONEOUSLY REFUNDED/ ITC WRONGLY AVAILED/ UTILISED [SECTION 73 & SECTION 74]

- ❑ Section 73 and section 74 deal with the manner in which the tax liability of a person should be determined in case of short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utilisation of ITC.



- ❑ The incidence of short payment/non-payment of tax or erroneous refund or wrong availment/utilisation of ITC may be because of an inadvertent bonafide mistake (**Normal Cases**) or it may be a deliberate attempt (**Fraud and Suppression Cases**) to evade the tax. Since the nature of offence is totally different in both the incidences, hence, under GST law, separate provisions for recovery of the tax and the amount of penalty have been made to deal with such type of cases. Besides these, there are provisions to encourage voluntary compliance such as no penalty or lesser penalty if the tax dues along with interest, are paid within the specified time limit/ incidence.

- ❑ **Limitation period:** One of the fundamental legal principles is that an element of certainty must be brought to the legal proceedings. The law of limitation is based on this principle. Any action under any law has to be taken within the limitation period prescribed otherwise uncertainty would prevail eternally.



The provisions of limitation period gain all the more importance in the legislation dealing with indirect taxes, where the tax burden is to be passed on to the next level at every stage.

Therefore, a tax law must have a limitation period, beyond which demands cannot be raised. Further, while a lesser time limit is available to the Revenue

to raise the demand in normal cases, it would have a longer limitation period available to raise the demand in fraud or suppression cases.

- ❑ **Show Cause Notice (SCN):** In order to adhere to the principles of natural justice, before raising any tax demand, a notice has to be issued (generally referred to as Show Cause Notice), asking the person chargeable with tax to show cause as to why the specified amount of tax, interest and penalty should not be demanded from him. The proper officer may, before serving of such SCN, communicate to said person, the details of any tax, interest and penalty as ascertained by him.
- ❑ The issuance of SCN grants an opportunity to such person to defend himself before adjudication. The person to whom such notice has been issued can contest the demand by filing a reply to the show cause notice and also by appearing before the adjudicating authority personally. After considering the reply filed by the person as well as the submissions made during the personal hearing, the adjudicating authority shall pass a speaking order, either confirming the tax demand or dropping the same.

The provisions contained in section 73 and section 74 have been discussed in detail below.

I. **Non-payment/short payment etc. on account of reasons other than fraud, wilful misstatement or suppression of facts [Section 73]**

A. **Issue of SCN [Section 73(1)]**

- ❑ In a case, where the non-payment/ short payment/ erroneous refund/ wrong availment/ utilisation of ITC is on account of reasons other than fraud, wilful misstatement or suppression of facts by the person chargeable with tax, the proper officer shall issue a notice, on the person chargeable such tax, requiring him to show cause as to why he should not pay the amount specified in the notice.
- ❑ The proper officer may, before serving of such SCN, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73.



- ❑ The show cause notice would specify the amount of tax along with interest payable thereon under section 50 [**@ 18% p.a.***] and a penalty leviable under the provisions of this Act or the rules made thereunder, liable to be paid by him. Needless to say, the notice should state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.

** as notified by Notification No. 13/2017 CT dated 28.06.2017*

B. Time limit to issue SCN [Section 73(2), (3) & (4) read with section 73(10)]

- ❑ The notice should be issued at least **3 months** prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter.
- ❑ The order referred herein has to be passed within **3 years** from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within **3 years** from the date of erroneous refund.



Thus, the **time-limit for issuance of SCN in non-fraud or non-suppression cases is 2 years and 9 months** from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

- ❑ Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilized for such periods, can be issued. This would expedite the adjudication process by avoiding duplication and reducing repetitive paperwork.
- ❑ The Service of such Statement shall be deemed to be Service of SCN on such person, subject to the condition that the grounds

relied upon for such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

C. Payment of tax before issuance of SCN [Section 73(5), (6) & (7)]

The law provides an opportunity to the person chargeable with tax to pay tax and interest before the issuance of notice. It emphatically stipulates that in such cases, no notice shall be issued and there shall be no other consequences (including penalty) for the default. The detailed provisions are as under:

- ❑ The person who is chargeable with tax, but has not paid the tax, or short paid the tax or wrongly availed/utilized the credit, or been granted an erroneous refund, may voluntarily come forward to pay such tax alongwith interest before the issue of SCN/Statement, as the case may be.
- ❑ In such case, he has to pay the amount of tax along with interest payable thereon under section 50, either on the basis of his own ascertainment of such tax or the tax as communicated by the proper officer. Further, he needs to inform the proper officer in writing of such payment. The proper officer shall issue an acknowledgement, accepting the payment made by the said person in prescribed form.
- ❑ Where such person has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in prescribed form.
- ❑ Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.
- ❑ Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself and no penalty is imposed on the person.
- ❑ The **option of paying tax and interest before issuance of SCN** so as to avoid the issuance of SCN and penalty is available in only those cases where any tax has not been paid/short paid/erroneously refunded/ITC wrongly availed/utilized **for**

reasons other than fraud or any wilful misstatement or suppression of facts to evade tax.

- ❑ After the person has voluntarily paid the tax along with interest, if the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he can issue a SCN in respect of the amount which falls short of the amount actually payable.

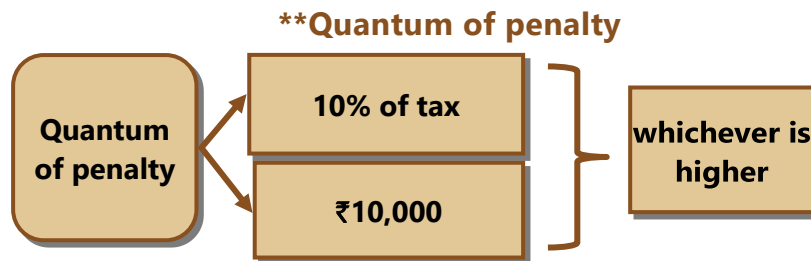
D. Payment of tax after issuance of SCN [Section 73(8)]

- ❑ Where a person is chargeable with tax not paid/short paid etc. and is issued a notice/statement under this section, misses the opportunity to pay the tax along with interest before the issue of SCN resulting in SCN not being issued thereafter and no penalty being imposed, he has another chance to discharge the tax with interest payable under section 50 with nil penalty within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.
- ❑ In other words, where such person pays the tax demanded along with interest payable under section 50 within 30 days of issue of SCN, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

E. Adjudication order [Section 73(9) & (11)]

- ❑ Where an SCN/Statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defense, if he is of the view that he is not so liable to pay whole/part of the amount mentioned in the SCN.
- ❑ The proper officer after considering the representation made by the person, if any, pass an order, determining the amount of tax, interest and penalty** due from such person.

**ADJUDICATION
ORDER**



- ❑ The quantum of penalty will remain same whether the tax amount, alongwith interest is paid within 30 days of the communication of the order or after 30 days.

****Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax [Section 73(11)].**

From section 73(11), it is clear that the non-payment of self-assessed tax or the amount collected as representing the tax has been treated differently than the other non/short payments as referred in section 73(1) [non payment/ short payment of tax/ erroneous refund of tax/ wrong availment/ utilization of input tax credit] where penalty can be reduced or waived. However, in case of non-payment of self-assessed tax or the amount collected as representing the tax within 30 days, penalty is mandatory and there is no waiver.

Amount collected as representing tax refers to an amount shown as GST in tax invoice even if no tax was payable on that transaction. Thus, if tax was collected in tax invoice, it is to be deposited with the Government even if no tax was actually payable on that transaction.

In case of non-payment of self-assessed tax and the amount collected as representing the tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment. The option to pay such tax before issuance of SCN or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected

as tax has not been paid within a period of 30 days from the due date of payment of such tax.

Clarification on levy of penalty under section 73 in case of delayed filing of return

Issue: Whether penalty in accordance with section 73(11) should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return?

Clarification: The provisions of section 73(11) can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act a general penalty under section 125 may be imposed after following the due process of law [*Circular No. 76/50/2018 GST dated 31.12.2018*].

F. Time limit for passing adjudication order [Section 73(10)]

- ❑ The proper officer shall issue the adjudication order within 3 years from the due date for furnishing of Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilized relates to. In case of erroneously granted refunds, such order should be passed within 3 years from the date of erroneous refund.
- ❑ Section 44(1) stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year unless otherwise extended.



II. Non-payment/short payment etc. on account of fraud, wilful misstatement or suppression of facts [Section 74]

A. Issue of SCN [Section 74(1)]



- ❑ In a case, where the non-payment /short payment/erroneous refund /wrong availment/utilisation of ITC is **on account of any fraud, wilful misstatement or suppression of facts** by the person chargeable to tax, proper officer shall issue a notice, on the person chargeable with such tax, requiring him to show cause as to why he should not pay the amount of tax, interest and penalty equivalent to tax specified in the notice.
- ❑ The proper officer may, before serving of such SCN, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 74.
- ❑ The notice would specify the amount of tax along with interest payable thereon under section 50 and **a penalty equivalent to the tax specified in the notice**, liable to be paid by him. Needless to say, the notice should state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.

B. Time limit to issue SCN [Section 74(2), (3) & (4) read with section 74(10)]

- ❑ The notice should be issued at least **6 months** prior to the time limit for passing the order determining the amount of tax, interest and penalty payable by defaulter.
- ❑ The said order has to be passed within **5 years** from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within **5 years** from the date of erroneous refund.



Thus, the **time-limit for issuance of SCN is 4 years and 6 months** from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

- ❑ Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised for such periods, can be issued.
- ❑ The Service of such Statement shall be deemed to be Service of Notice on such person, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

C. **Payment of tax before issuance of SCN [Section 74(5), (6) & (7)]**

The law provides an opportunity to the person chargeable with tax to pay tax, interest and penalty equivalent to 15% of such tax, before the issuance of notice. It emphatically stipulates that in such cases, no notice shall be issued and there shall be no other consequences for the default. The detailed provisions are as under:

- ❑ The person who is chargeable with tax, but has not paid the tax/short paid the tax/wrongly availed/utilised the credit/been granted an erroneous refund by reason of fraud etc., may voluntarily come forward to pay such tax alongwith interest and specified penalty before the issue of SCN/Statement, as the case may be.
- ❑ In such case, he has to pay the amount of tax along with interest payable thereon under section 50 and a penalty equivalent to 15% of such tax either on the basis of his own ascertainment of such tax or the tax as communicated by the proper officer. Further, he needs to inform the proper officer in writing of such payment.

- ❑ Where such person has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in prescribed form.
- ❑ Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.
- ❑ Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself.
- ❑ After such person has voluntarily paid the tax along with interest and penalty, if the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he can issue a SCN in respect of the amount which falls short of the amount actually payable.

D. Payment of tax after issuance of SCN [Section 74(8)]

- ❑ Where a person is chargeable with tax not paid/short paid etc. and is issued a notice/statement under this section for reasons of fraud etc., misses the opportunity to pay the tax along with interest and penalty equivalent to 15% of tax, before the issue of SCN resulting in no SCN being issued thereafter, he has another chance to discharge tax alongwith interest payable under section 50 and **penalty equivalent to 25%** of tax within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.
- ❑ In other words, where such person pays the tax demanded along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of SCN, all proceedings in respect of the said notice shall be deemed to be concluded.

E. Adjudication order [Section 74(9) & (11)]

- ❑ Where an SCN/Statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defense, if he is the view that he is not so liable to pay whole/part of the amount mentioned in the SCN.



- ❑ The proper officer after considering the representation made by the person, if any, pass an order, determining the amount of tax, interest and penalty due from such person.
- ❑ Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

F. Time limit for passing adjudication order [Section 74(10)]

- ❑ The proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to. In case of erroneously granted refunds, such order should be passed within 5 years from the date of erroneous refund.



Section 44(1) stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year.

I. For the purposes of section 73 and section 74:

(i) the expression **“all proceedings in respect of the said notice”** shall not include proceedings under section 132. *Section 132 is in relation to prosecution. Thus, the person can be prosecuted under GST law even if no further demand can be raised for tax, interest or penalty. Prosecution in criminal court is independent of and can be in addition to, penalty imposed under GST law.*

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125¹ are deemed to be concluded. *Sometimes, if a notice is*

¹ Provisions relating to sections 122 & 125) have been discussed in detail in Chapter 21 – Offences and Penalties and Ethics under GST in this Module of the Study Material.

issued to a company, notice may be also issued to its executive director, employees, transporter etc. for same cause of action. These are termed as 'co-noticees', while company is the 'main noticee'. Conclusion of proceedings against main noticee would be deemed to be conclusion of proceedings against all co-noticees also and the entire case will stand closed.

- II. For the purposes of this Act**, the expression "**suppression**" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. Thus, definition of 'suppression' is very clear that only if information that was required to be disclosed under the GST law (e.g. in return, statement or report or when specific query was raised) is not disclosed, that would amount to 'suppression'. It is not duty of a taxable person to disclose each material fact to the Department, if it is not asked for.

The above provisions have been summarized in the following tables:

Table A:

S. No.	Action by tax payer	Amount of penalty payable	
		Normal Cases	Fraud Cases
1.	Tax amount, along with the interest, paid before issuance of notice	No penalty and no notice shall be issued	15% of the tax amount payable as penalty and no notice shall be not be issued
2.	Tax amount, along with the interest, paid within 30 days of issuance of notice	No penalty. All proceedings deemed to be concluded	25% of the tax amount payable as penalty. All proceedings deemed to be concluded.
3.	Tax amount, along with the interest, paid within 30 days of communication of order	10% of the tax amount or ₹ 10,000, whichever is higher	50% of the tax amount payable as penalty. All proceedings deemed to be concluded.

4.	Tax amount, along with the interest, paid after 30 days of communication of order	10% of the tax amount or ₹ 10,000, whichever is higher	100% of the tax amount
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Table B:

S. No.	Nature of case	Time for issuance of notice	Time for issuance of order
1.	Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
3.	Any amount collected as tax but not paid	No time limit	Within 1 year from the date of issue of notice <i>[to be discussed subsequently in this chapter]</i>
4.	Non- payment of self-assessed tax	No need to issue a SCN	Recovery proceedings can be started directly <i>[to be discussed subsequently in this chapter]</i>

Monetary limits prescribed for issuance of SCNs by different level of officers

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and orders under sections 73 and 74², up to the prescribed monetary limits of tax (including cess) not paid/ short paid/ erroneously refunded/ ITC of CGST wrongly availed/utilized for issuance of SCNs and passing of orders under sections 73 and 74:

CGST Officer	Monetary limit of CGST	Monetary limit of IGST	Monetary limit of CGST and IGST
Superintendent of Central Tax	Not exceeding ₹ 10 lakh	Not exceeding ₹ 20 lakh	Not exceeding ₹ 20 lakh
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakh and not exceeding ₹ 1 crore	Above ₹ 20 lakh and not exceeding ₹ 2 crores	Above ₹ 20 lakh and not exceeding ₹ 2 crores
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue SCNs. An SCN issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered.

In case SCNs have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such SCNs should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess) [Circular No. 31/05/2018 GST dated 09.02.2018]

² made applicable to matters in relation to IGST vide section 20 of the IGST Act



4. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [SECTION 75]

General provisions relating to determination of tax are contained in section 75 of CGST Act. These provisions are applicable both in case of determination of tax not paid/short paid/ erroneously refunded/ITC wrongly availed/ utilised whether by reason of fraud/any wilful misstatement/suppression of facts or otherwise.

These provisions have been discussed are as follows:

A. **Period of stay order to be excluded in computing the limitation period [Section 75(1)]**

Where the service of notice or issuance of order is stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the *period for issuance of notice and issuance of adjudication order***, as the case may be.



***period as specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74*

B. **In case charges of fraud/any wilful misstatement/suppression of facts are not established for a notice issued in a fraud case, tax to be determined deeming the demand notice to be issued in normal case [Section 75(2)]**

Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under section 73(1).

C. Adjudication order issued in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction be issued with 2 years [Section 75(3)]

Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within 2 years from the date of communication of the said direction.

D. Opportunity of being heard [Section 75(4)]

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

Adjournment of hearing to grant time to person chargeable with tax [Section 75(5)]

The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.

However, such adjournment shall be granted for a maximum of 3 times to a person during the proceedings.

E. Adjudication order should be a speaking order [Section 75(6)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision.



F. Tax, interest and penalty demanded in order not to exceed amount specified in notice [Section 75(7)]

The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

G. In case of modification of tax by the Appellate Authority/Tribunal/Court, penalty and interest to be modified accordingly [Section 75(8)]

Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

H. Payment of interest mandatory even if not specified in the adjudication order [Section 75(9)]

The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

I. Adjudication order to be passed mandatorily within stipulated time [Section 75(10)]

The GST law ensures timely disposal of cases by providing that if the adjudication order is not issued within the stipulated time limit of 3 years in normal cases or 5 years in fraud cases, as the case may be, the adjudication proceedings shall be deemed to be concluded.

J. In case of appeal filed by Department against prejudicial decision of the Appellate Authority/Appellate Tribunal/High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded [Section 75(11)]

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the time limit for passing adjudication order, where proceedings are initiated by way of issue of a SCN under the sections 73 and 74.

K. Amount of self-assessed tax or interest remaining unpaid to be recovered under section 79 [Section 75(12)]

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be directly recovered under the provisions of section 79 *[discussed subsequently in this chapter]*.

The expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

The scope of the term "self-assessed tax" is wide enough and hence the recovery proceedings can straight away be initiated by the proper officer for the outward supplies shown in the Form GSTR-1, if not reflecting in Form GSTR-3B. In other words, where the tax payable in respect of details of outward supplies furnished in Form GSTR-1, has not been paid through Form GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79.

However, the difference/mismatch between details of Form GSTR-1 and Form GSTR-3B may arise due genuine reasons:

For instance,

- ❑ a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR-1 or GSTR-3B, or
- ❑ where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR-1 of the current tax period.

Therefore, Instruction No. 01/2022 GST dated 07/01/2022 provides that in case of mismatch between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either (i) fails to reply to the proper officer, or (ii) fails to make the payment of such amount short paid/not paid within the prescribed time or (iii) fails to explain the reasons for such amount short paid/not paid.

L. In case of penalty being imposed under section 73/74, no other penalty to be imposed for the same act/omission [Section 75(13)]

Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Clarifications

I. Clarification pertaining to cases where it is concluded that the notice issued under section 74(1) not sustainable for reason that the charges of fraud etc. not been established against the noticee and tax payable being determined deeming as if the notice was issued under section 73(1)

In this regard, Circular No. 185/17/2022 GST dated 27.12.2022 clarifies following issues:

Issues	Clarification
<p>In some of the cases where the show cause notice (SCN) has been issued by the proper officer to a noticee under section 74(1) for demand of tax not paid/ short paid or erroneous refund or ITC wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under section 74(1) for the reason that the charges of fraud or any willful-misstatement or suppression of facts to</p>	<ul style="list-style-type: none"> • Section 75(3) provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within 2 years from the date of communication of the said direction. • Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under section 73(1) in accordance with the provisions of section 75(2), the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in section 75(3), i.e. within a

<p>evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under section 73(1), in accordance with the provisions of section 75(2). What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?</p>	<p>period of 2 years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</p>
<p>How the amount payable by the noticee, deeming the notice to have been issued under section 73(1), shall be re-computed/re-determined by the proper officer as per provisions of section 75(2)?</p>	<ul style="list-style-type: none"> • In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of section 75(2), the demand would have to be re-determined keeping in consideration the provisions of section 73(2) read with section 73(10)³. • Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued

³ A combined reading of provisions of section 73(1), 73(2), 73(9) and 73(10) transpires that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the SCN in terms of section 73(1) has to be issued within **2 years and 9 months**, from the due date of furnishing of annual return for the FY to which such tax not paid or short paid or ITC wrongly availed or utilized relates, or from the date of erroneous refund.

under section 73(1) in terms of section 75(2), the same can be re-determined for so much amount of tax short paid or not paid, or ITC wrongly availed or utilized or that of erroneous refund, in respect of which SCN was issued within the time limit as specified under section 73(2) read section 73(10). Thus, only the amount of tax short paid or not paid, or ITC wrongly availed or utilized or tax payable on account of erroneous refund, along with interest and penalty payable, in terms of section 73 can be re-determined, where SCN was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective FY or from the date of erroneous refund.

In case, where the SCN under section 74(1) was issued for tax short paid or tax not paid or wrongly availed or utilized ITC or for erroneous refund beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the FY to which such demand relates to or from the date of erroneous refund, and the appellate authority concludes that the notice is not sustainable under section 74(1) thereby deeming the notice to have been issued under section 73(1), the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73.

- In cases, where the SCN in terms of

section 74 was issued for tax short paid or not paid tax or wrongly availed or utilized ITC on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said FY to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the SCN would be covered under re-determined amount.

- Where the SCN under section 74(1) was issued for multiple FYs, and where notice had been issued before the expiry of the time period as per section 73(2) for one FY but after the expiry of the said due date for the other FYs, then the amount payable in terms of section 73 shall be re-determined only in respect of that FY for which SCN was issued before the expiry of the time period as specified in section 73(2).

II *Clarification on various issues relating to applicability of demand and penalty provisions under CGST Act in respect of transactions involving fake invoices*

A number of cases have been noticed where the registered persons are found to be involved in issuing tax invoice (fake invoices), without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize ITC fraudulently.

Circular No. 171/03/2022 GST dated 06.07.2022 clarifies the applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices as follows:

Sl. No.	Issues	Clarification
1.	<p>In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both,</p> <p>(i) whether such transaction will be covered as supply under section 7?</p> <p>(ii) whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74?</p> <p>(iii) whether any penal action can be taken against registered person 'A' in such cases?</p>	<p>Since there has only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7.</p> <p>As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73/section 74 in respect of the same.</p> <p>Besides, no penal action under the provisions of section 73/section 74 is required to be taken against 'A' in respect of the said transaction.</p> <p>The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual</p>

		supply of goods or services or both.
2.	<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice.</p> <p>B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies.</p> <p>Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73/section 74 or any other provisions of the CGST Act?</p>	<p>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b), he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, along with applicable interest under provisions of section 50.</p> <p>Further, as per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of the CGST Act, including under section 122.</p>

3.

A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person 'C' by issuing invoices without underlying supply of goods or services or both.

Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.

In this case, the ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both.

As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16(2)(b). In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction.

Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in

		<p>respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73/section 74.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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The fundamental principles that have been outlined in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve a complex mixture of above scenarios or even may not be covered by any of the above scenarios.

Any person who has retained the benefit of transactions specified under section 122(1A), and at whose instance such transactions are conducted, shall also be liable for penal action under section 122(1A).

It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of ITC, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of ITC or refund of tax, provisions of section 132 may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.



5. TAX COLLECTED BUT NOT DEPOSITED [SECTION 76]

The provisions of this section are based on the principle that nobody should be unjustly enriched in the name of Revenue. If any amount is collected in the name of tax, the same must be deposited with the Government.



Such situation may arise in case where tax is collected on supplies on which the tax is leviable, but such tax is not deposited with the Government or where tax is collected on supplies on which tax is not leviable at all, and thus, tax collected is not deposited with the Government.

The detailed provisions of this section have been discussed hereunder:

A. Amount representing tax collected from any person to be paid to the Central Government [Section 76(1)]

Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

B. Issue of SCN [Section 76(2)]

Where any amount is required to be paid to the Government under subsection (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

C. Determination of amount due [Section 76(3)]

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

D. Interest payable on the amount [Section 76(4)]

- The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon.
- Interest is payable at the rate specified under section 50.
- Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

E. Opportunity of being heard [Section 76(5)]

An opportunity of hearing shall be granted where a request is received in writing from the person to whom SCN was issued.

F. Time limit for issuance of order [Section 76(6) & (7)]

The proper officer shall issue an order within **1 year** from the date of issue of the notice.

Where the issuance of order is stayed by an order of the Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of **1 year**.

G. Order must be a speaking order [Section 76(8)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

H. Adjustment of amount payable under section 76(1) and (3) [Section 76(9), (10) & (11)]

The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Consumer Welfare Fund or refunded to the person who has borne the incidence of such amount.

The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.



6. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT [SECTION 77]

A registered person who has paid the CGST and SGST or, as the case may be, the CGST and the UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of CGST and SGST or, as the case may be, the CGST and the UTGST tax payable.

Similar provisions are contained in section 19 of the IGST Act, 2017.

Section 19 provides that a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed. A registered person who has paid CGST and SGST or, as the case may be, the CGST and the UTGST, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

Clarification in respect of refund of tax specified in section 77 of the CGST Act and section 19 of the IGST Act

It is clarified that the term "subsequently held" in said sections covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or

where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding, for instance, scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.



(1) Ram Associates, a registered person, pays IGST on a transaction treating the same as inter-State supply by mistake, though it was an intra-state supply. In this case, Ram Associates has to pay CGST and SGST/UTGST, without any interest. He can thereafter claim refund of IGST which was erroneously paid.

7. RECOVERY PROCEEDINGS [SECTIONS 78 & 79]

The recovery proceedings are final steps towards the realisation of any tax or any other amount, which has been confirmed as payable after following the due process of adjudication by the proper officer. These recovery provisions under the CGST Act, 2017 lay down a well-defined procedure which is as follows:

A. Initiation of recovery proceedings [Section 78]

Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid by such person within a period of **3 months** from the date of service of such order. If a taxable person fails to do so, recovery proceedings are initiated against him.

RECOVERY PROCEEDINGS

However, where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period **less than a period of 3 months** as may be specified by him.

B. Recovery of tax [Section 79]

If the payable amount is not paid by a person within the specified time limit of 3 months, recovery proceedings shall be initiated and various actions may be taken by the recovery officer, for realisation of Government dues.

Recovery of taxes can also be made from distinct persons [referred to in section 25(4) & (5)⁴] present in different States/ UTs.

The options for recovery of Government dues include deduction of money from any amount payable to such tax payer, detaining and selling any goods, directing any other person from whom the money is due to such person, attaching any property belonging to the defaulter etc.

MODES OF RECOVERY OF TAX [SECTION 79(1)]

Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by **one or more of the following modes**, namely:



(i) Recovery by deduction from any money owed [Section 79(1)(a) read with rule 143]

The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person [referred as 'defaulter'] which may be under the control of the proper officer or such other specified officer.

Specified officer shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

(ii) Recovery by sale of goods under the control of proper officer [Section 79(1)(b) read with rule 144]

- The proper officer may recover or may require any other specified officer to recover the amount so payable from a defaulter by detaining and selling any goods [through a process of auction, including e-auction] belonging to such person which are under the control of the proper officer or such other specified officer.

⁴ Concept of distinct persons has been explained in detail in Chapter 1 – Supply under GST in Module 1 of the Study Material.

- ❑ The proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.
 - ❑ Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.
- (iii) **Garnishee proceedings - Recovery from a third person [Section 79(1)(c) read with rule 145]**
- ❑ The proper officer may, by a notice in prescribed form, in writing, require any other person:
 - ❖ from whom money is due/may become due to such person or
 - ❖ who holds/may subsequently hold money for/on account of such person to pay to the Government
 - ❖ either forthwith upon the money becoming due or being held, or
 - ❖ within the time specified in the notice not being before the money becomes due or is held,so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.
 - ❑ Every person to whom the notice is issued hereunder shall be bound to comply with such notice.
 - ❑ Where any such notice is issued to a **post office, banking company or an insurer**, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

- ❑ In case the person to whom notice is issued hereunder, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow.
- ❑ The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.
- ❑ Any person making any payment in compliance with the notice issued hereunder shall be deemed to have made the payment under the authority of the person in default.
- ❑ Further, such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt.
- ❑ Any person discharging any liability to the person in default after service on him of the notice shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.
- ❑ Where a person on whom a notice is served hereunder proves to the satisfaction of the officer issuing the notice that:
 - ❖ the money demanded/any part thereof was not due to the person in default or
 - ❖ he did not hold any money for/on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person/be held for/on account of such person,nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.

- Where the third person makes the payment of the amount specified in the notice, the proper officer shall issue a certificate in prescribed form to the third person clearly indicating the details of the liability so discharged.

(iv) Recovery by sale of movable/immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154]

- The proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of 30 days next after any such distress, may cause the said property to be sold [through auction including e-auction] and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person [Section 79(1)(d)].
- The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.

In case of attachment/d distraint of	
an immovable property	order shall be affixed on the property till the confirmation of sale
a movable property	proper officer shall seize the property and take its custody.

- Stamp duty/any other tax/fee payable on transfer of such property shall be paid by the transferee to the Government.

- ❑ Any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in/in the custody of any Court shall be attached in the manner provided in rule 151 *[discussed subsequently in this chapter]*.
- ❑ Where any claim is preferred/any objection is raised with regard to the attachment/distrain of any property by a person claiming that he had some interest in/was in possession of, the property in question, proper officer shall investigate the same and postpone the sale till such time.
- ❑ If proper officer finds merit in his claims/objection upon investigation, proper officer will release the property, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.
- ❑ Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.
- ❑ The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under section 129(3) shall,-
 - (a) first, be appropriated against the administrative cost of the recovery process;
 - (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under section 129(3), as the case may be;
 - (c) next, be appropriated against any other amount due from the defaulter under the CGST Act/IGST Act/UTGST Act/any of the SGST Act and the rules made thereunder; and
 - (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the GST law,

and where the said person is not required to be registered under the GST law, the said amount shall be credited to the bank account of the person concerned;

- ❑ Where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of 6 months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.
 - ❑ Where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.
 - ❑ Any officer/other person who has a duty to perform in connection with such sale will not acquire any interest in property sold.
 - ❑ No such sale will take place on Sundays/other general holidays recognized by Government.
 - ❑ Proper officer may seek assistance from jurisdictional police station.
- (v) Recovery as arrears of land revenue [Section 79(1)(e) read with rule 155]**
- ❑ The proper officer may prepare a certificate in prescribed form signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.
- (vi) Recovery as fine imposed by Magistrate [Section 79(1)(f) read with**

rule 156]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate in prescribed form to recover from the person concerned the amount specified thereunder and such Magistrate shall proceed to recover from such person amount specified thereunder as if it were a fine imposed by him.

(vii) Recovery through execution of a decree, etc. [Rule 146]

Where any amount is payable to the defaulter in the execution of a decree of a Civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

(viii) Recovery through surety [Rule 157]

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

(ix) Recovery from company in liquidation [Rule 160]

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in prescribed form.

Other provisions governing recovery of tax [Section 79(2), (3) & (4)]

- Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section [Section 79(2)].

- ❑ Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government [Section 79(3)].
- ❑ Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government [Section 79(4)].

Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial/full GST liability arising out of the issue pointed out by the Department during the course of such search, inspection or investigation. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability have alleged use of force and coercion by the officers for making recovery during the course of search, inspection or investigation.

Consequently, the legal position of voluntary payment of taxes has been clarified for ensuring correct application of law and for protecting the interest of the taxpayers.

Under the CGST Act, the taxpayers have an option to make voluntary payment of tax. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5). This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 for delayed payment of tax and may also save him from higher penalty imposed on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made

by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings.

However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments.

[Instruction No. 01/2022-23 [GST-Investigation] dated 25.05.2022]

8. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS [SECTION 80]

Considering various business aspects, the provisions for payment of all such amounts, other than self-assessed tax, in instalments have also been made in the Act.



A person can avail this benefit of payment in instalments, by making an application to the Commissioner by specifying reasons for such request.

On receipt of application, the Commissioner may allow the payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest.

If there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.

Provisions of section 80 read alongwith rule 158 of the CGST Rules, 2017 have been explained in detail as under:

- A taxable person, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments, shall furnish an application for the same in prescribed form.
- Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- Commissioner may, upon consideration of the same, for reasons to be recorded in writing, extend the time for payment or allow payment of any

amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding 24, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.

- ❑ However, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.
- ❑ **Facility of payment in instalments not allowed in certain cases:** The facility of payment in instalments shall not be allowed where -
 - (a) the taxable person has already defaulted on the payment of any amount under the CGST Act or IGST Act or UTGST Act or any of the SGST Act, for which the recovery process is on;
 - (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the IGST Act or UTGST Act or any of the SGST Act;
 - (c) the amount for which instalment facility is sought is less than ₹ 25,000.

9. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [SECTION 81]

- ❑ Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.
- ❑ However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.



10. TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

11. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [SECTION 83]

- Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed [Section 83(1)].
- Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1) [Section 83(2)].



The related provisions contained in CGST Rules are as follows:

(i) **Provisional attachment of property [Rule 159]**

- Where the Commissioner decides to attach any property, including bank account in accordance with aforesaid provisions, he shall pass an order to that effect mentioning therein, the details of property which is attached.
- The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed:

- (i) on the written instructions from the Commissioner to that effect

or

(ii) on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property,

whichever is earlier.

- ❑ A copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.

- ❑ Where the property attached is of perishable or hazardous nature, and if the taxable person pays:

- (i) an amount equivalent to the market price of such property

or

- (ii) the amount that is or may become payable by the taxable person whichever is lower

then such property shall be released forthwith, by an order in prescribed form, on proof of payment.

- ❑ However, where the taxable person fails to pay the amount referred above in respect of the said property of perishable/hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

- ❑ Any person whose property is attached may at any time of the attachment, file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order.

- ❑ The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order.

(ii) Attachment of debts and shares, etc. [Rule 151]

- ❑ A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in prescribed form prohibiting:
 - (a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;
 - (b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
 - (c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.
 - ❑ A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.
 - ❑ A debtor, prohibited hereunder, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.
- (iii) Attachment of property in custody of courts or Public Officer [Rule 152]**
- ❑ Where the property to be attached is in the custody of any Court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.
- (iv) Attachment of interest in partnership [Rule 153]**
- ❑ Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as

the circumstances of the case may require.

- The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.



12. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [SECTION 84]

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as Government dues), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then:

- (a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;
- (b) where such Government dues are reduced in such appeal, revision or in other proceedings —
 - (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;
 - (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
 - (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Proceedings conducted under IBC covered under the term 'other

proceedings' in section 84

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

[Circular No. 187/19/2022 GST dated 27.12.2022]

**TEST YOUR KNOWLEDGE**

1. *Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76.*
2. *Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74.*
3. *Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.*
4. *A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?*
5. *Briefly discuss the modes of recovery of tax available to the proper officer.*
6. *Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 73.*

7. *Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.*

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

8. *Anant & Co. self-assessed its CGST liability as ₹ 90,000 for the month of April, but failed to make the payment.*

Subsequently the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 73 for failure to pay GST and issued show cause notice on 10th August which was received by Anant & Co. on 14th August.

Anant & Co. deposited the tax along with interest on 25th August and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of ₹ 90,000) under the CGST Act.

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.



ANSWERS

1. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such

person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

2. The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:
 - (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or within 2 years and 9 months from the date of erroneous refund.
 - (ii) In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or within 4 years and 6 months from the date of erroneous refund.
3. The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 are as under:
 - (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to or within 3 years from the date of erroneous refund. [Section 73(10)].
 - (ii) In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to or within 5 years from the date of erroneous refund. [Section 74(10)].
4. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

5. The proper officer may recover the dues in following manner:
- (a) Deduction of dues from the amount owned by the tax authorities payable to such person.
 - (b) Recovery by way of detaining and selling any goods belonging to such person;
 - (c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
 - (d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
 - (e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
 - (f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
 - (g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
 - (h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].
6. As per section 73, a show cause notice can be issued by the proper officer if it appears to him that:
- tax has not been paid; or
 - tax has been short paid; or
 - tax has been erroneously refunded; or
 - input tax credit has been wrongly availed or utilized,
- for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax.

The notice should be issued at least 3 months prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter [Sub-section (2) of section 73].

The order referred herein has to be passed within three years from the due date for furnishing the annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund [Sub-section (10) of section 73].

Thus, the time-limit for issuance of show cause notice is 2 years and 9 months from the due date of filing annual return for the financial year to which the demand pertains or within 2 years and 9 months from the date of erroneous refund. As per section 44(1), the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

7. The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the

amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

8. Due date for payment of tax for the month of April is 20th May.

As per section 73, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

- (i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or
- (ii) ₹ 10,000,

whichever is higher, is payable by him under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

Hence, the stand taken by the Department that penalty will be levied on Anant & Co. is correct, but the amount of penalty of ₹ 45,000 under CGST Act is not correct.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 came into force from 01.08.2019. However, the amendments made in section 2(4) of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the date of printing of this material. Therefore, the applicability or otherwise of such amendment for May 2025 and/or November 2025 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions of section 2(4) are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
<p>Section 2(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;</p>	<p>Section 2(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;</p>	<p>The definition of adjudicating authority proposed to be amended to exclude the proposed National Appellate Authority for Advance Ruling from the purview of adjudicating authority.</p>

AMENDMENTS MADE VIDE THE FINANCE (NO.2) ACT, 2024

The Finance (No. 2) Act, 2024 came into force from 16.08.2024. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance (No. 2) Act, 2024 became effective subsequently from the date notified by the Central Government in the Official Gazette.

In the table given below, the amendment in section **73 and 74** of the CGST Act, 2017 and newly incorporated **section 74A** by the Finance (No. 2) Act, 2024 have been elaborated. **Since this amendment has become effective from 01.11.2024, said amendment is not applicable for May 2025 examinations. However, said amendment is applicable for November 2025 examinations.** Therefore, students appearing in November 2025 examinations should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2024	Remarks
73	Section Heading Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.	Section Heading Determination of tax, <i>pertaining to the period up to Financial Year 2023-24</i> , not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts	Sub-section (12) has been inserted in section 73 so as to restrict the applicability of the said section for determination of tax pertaining to the period upto Financial Year 2023-24 .
73		<u>New sub-section (12)</u> <i>The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.</i>	Section heading has also been accordingly modified.

74	<p>Section Heading Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.</p>	<p>Section Heading Determination of tax, <i>pertaining to the period up to Financial Year 2023-24</i>, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.</p>	<p>Sub-section (12) has been inserted in section 74 so as to restrict the applicability of the said section for determination of tax pertaining to the period upto Financial Year 2023-24.</p>
74		<p><u>New sub-section (12)</u> <i>The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.</i></p>	<p>Section heading has also been accordingly modified.</p>
74	<p>Explanation 2 For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.</p>	<p>Explanation 2 For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.</p>	<p>Explanation 2 to section 74 defining expression "suppression" has been omitted from this section. This expression is defined in new section 74A.</p>

75	<p><u>Sub-section (1)</u> Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 as the case may be.</p>	<p><u>Sub-section (1)</u> Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 <i>or sub-sections (2) and (7) of section 74A</i>, as the case may be.</p>	<p>New sub-section (2A) is incorporated in section 75 so as to provide for redetermination of penalty demanded in a notice invoking penal provisions under clause (ii) of sub-section (5) of new section 74A of the said Act to re-determine the penalty as per clause (i) of the sub-section (5) of the said section, in cases where the charges of fraud, wilful misstatement, or suppression of facts are not established. It also amends section 75, so as to incorporate a reference to the sub-sections (2) and (7) of section 74A or the sub-sections thereof, in the relevant sub-sections of</p>
75		<p><u>New sub-section (2A)</u> Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.</p>	

75	<p><u>Sub-section (10)</u> The adjustment proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within 5 years as provided for in sub-section (10) of section 74.</p>	<p><u>Sub-section (10)</u> <i>The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.</i></p>	this section.
75	<p><u>Sub-section (11)</u> An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision</p>	<p><u>Sub-section (11)</u> An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision</p>	

	<p>of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.</p>	<p>of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 or sub-section (7) of section 74A where proceedings are initiated by way of issue of a show cause notice under the said sections.</p>	
<p>75</p>	<p><u>Sub-section (12)</u> Notwithstanding anything contained in section 73 or section 74 where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.</p>	<p><u>Sub-section (12)</u> Notwithstanding anything contained in section 73 or section 74 or section 74A, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.</p>	
<p>75</p>	<p><u>Sub-section (13)</u> Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same</p>	<p><u>Sub-section (13)</u> Where any penalty is imposed under section 73 or section 74 or section 74A, no penalty for the same act or omission shall be</p>	

person under any other provision of this Act.

imposed on the same person under any other provision of this Act.

New section 74A has been incorporated by the Finance (No.2) Act, 2024 in the CGST Act, 2017, so as to provide for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason **pertaining to the Financial Year 2024-25 onwards**. It also provides for the same limitation period for issuing demand notices and orders in respect of demands from the Financial Year 2024-25 onwards, irrespective of whether the charges of fraud, wilful misstatement, or suppression of facts are invoked or not, while keeping a higher penalty, for cases involving fraud, wilful misstatement, or suppression of facts. Provisions of section 74A have been reproduced below:

Section 74A	<i>Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward</i>
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(1)	<i>Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder: Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.</i>
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(2)	<i>The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.</i>
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(3)	<i>Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or</i>
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	<i>input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.</i>
(4)	<i>The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.</i>
(5)	<i>The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,— (i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher; (ii) for the reason of fraud or any willful misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.</i>
(6)	<i>The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.</i>
(7)	<i>The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2): Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months. (8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other</i>

	<p><i>than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, may,—</i></p> <p><i>(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;</i></p> <p><i>(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.</i></p>
(8)	<p><i>The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, may,—</i></p> <p><i>(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;</i></p> <p><i>(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.</i></p>
(9)	<p><i>The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,—</i></p> <p>—</p>

	<p>(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;</p> <p>(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;</p> <p>(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.</p>
(10)	<p>Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.</p>
(11)	<p>Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.</p>
(12)	<p>The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.</p> <p>Explanation 1 — For the purposes of this section —</p> <p>(i) the expression “<u>all proceedings in respect of the said notice</u>” shall not include proceedings under section 132;</p> <p>(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been</p>

concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2 — For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.