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GST DEPARTMENT ISSUES NOTICES TO THE DEBTORS OF THE DEFAULTERS TO MAKE GOOD FOR THE DEFAULT IN DEPOSIT OF GST DUES

The status of Indian economy and tax collections is known to everyone. Recently, the data released by the department showed very good increase in the GST collections and GST collections crossed Rs. one lac crore mark continuously for the last few months. The credit for robust GST collections goes to the industry for good compliance and also to the GST departments of States and Centre which increased the levels of reviews/intelligence/use of technology resulting in higher revenue collections. We keep reading in the newspapers various headlines where bogus ITC claim frauds are being detected and the responsibilities are being fixed.

The government seems to be in no mood to let the defaulters/fraudsters escape and is using all provisions to ensure that GST revenue collections keep an upward momentum.

Recently one of the (State GST) department has started issuing notices to the Debtors of the defaulters asking them not to pay to their supplier (GST defaulter) rather to deposit the amount due to the defaulter assessee in GST account through DRC-14 which will be considered as good and sufficient discharge of the liability to such person to the extent amount is paid.

The debtor here refers to the person who has received goods and services and invoices have been raised by the defaulter assessee but the payment has not been made to his account and the same is being shown in the books of accounts of defaulter as debtors

Not only this, an indirect threat is also being issued to the debtor if the amount is paid to the said person after receipt of the notice, the debtor will be held personally liable and in case of non-payment of such due amount, the debtor will be considered to be the defaulter.

The template of the notice being issued by the department is given below.

The notices in Form DRC-13 under CGST Act bear the file number, DIN (Document Identification) mentioned manually, date and name & designation of the issuing officer.

*Whereas a sum of on account of tax is payable under the provisions of the SGST/UTGST/CGST/IGST Acts byholding, who has failed to make payment of such amount and it is observed that **you are one of the current debtors of the said taxable person** and an amount may be due or may become due to the said taxable person from you;*

You are hereby directed to pay the amount due or may become due to the said taxable person, to the government forthwith or upon the money becoming due or being held in compliance of the provisions contained in clause(c)(i) of subsection of section 79 Of the Act.

Please note that any payment made by you in compliance of this notice will be deemed under section 79 to have been made under the authority of the said taxable person and the certificate from the government in GST-14 will constitute a good and sufficient discharge of your liability to such person to the extent of the amount specified in the certificate.

Also, please note that if you discharge any liability to the said taxable person after receipt of this notice, you will be personally liable to the State/Central Government under section 79 of the Act to the extent of the liability of the taxable person for tax, cess, interest and penalty, whichever is less.

Please note that, in case you fail to make payment in pursuance of this notice, you shall be deemed to be defaulter in respect of the amount specified in the notice and consequences of the Act of the rules made thereunder shall follow

The issues which emerge out of such notices may be like this

- What if the defaulter has shown the noticee as debtor for X amount but the debtor has some disputes with regard to the payments and claims that nothing is payable. Does it mean that he should simply file a reply that nothing is payable?
- What if the defaulter has not filed the GST returns and the noticee was not able to claim the ITC? Can he send a reply that he has withheld the amount because he could not claim the ITC on account of non-filing of returns by the defaulter?
- Whether the noticee can ask for the detailed back up of the amount being claimed to be due by the department.
- Whether noticee should contact the defaulter and seek his concurrence before making payment to the department.
- Because of the default in return filings, the recipients could not take the ITC, now after the payment to GST department, how the ITC will get reflected in the accounts of the recipients.

The department need to issue a detailed circular in this regard for the benefit of all the assesses.

Also, one should keep in mind the judgement by Hon'ble HC, Jharkhand in the matter of Mahadeo Construction Co. [W.P.(T) No. 3517 of 2019 dated 21-04-2020] where it was held that no interest liability u/s 50 of the CGST Act 2017 can be determined without initiating any adjudicatory process either under section 73 or 74 of the CGST Act.

Further held that, garnishee proceedings u/s 79 of the CGST Act, 2017 cannot be initiated for recovery of interest by issuing notice to the petitioner's bankers without adjudicating the liability of interest, when the same is admittedly disputed by the assessee.

The above judgement may provide basis for filling of reply subject to the specific circumstances of the case.

The relevant provisions which have been quoted in the notices are given below for ready reference. The notices are being issued in form GST DRC-13 which refers to Rule 145(1) and section 79(1)(c) primarily.

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: --

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- (c) (i) the proper officer may, by a notice in writing, require any 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 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;
- (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, 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;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, 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;
- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
- (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and 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;
- (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) 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;
- (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or 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 or be held for or 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;

Relevant CGST Rule

145. Recovery from a third person.- (1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as

—the third person, a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice.

(2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.

FORM GST DRC – 14

[See rule 145(2)]

Certificate of Payment to a Third Person

In response to the notice issued to you in **FORM GST DRC-13** bearing reference no. _____ dated _____, you have discharged your liability by making a payment of Rs. _____ for the defaulter named below:

GSTIN –

Name -

Demand order no. : Date:

Reference no. of recovery : Date:

Period:

This certificate will constitute a good and sufficient discharge of your liability to above mentioned defaulter to the extent of the amount specified in the certificate.

Signature

Name

Designation

Place:

Date:

The government though is taking the actions for the recoveries but is likely to put the genuine taxpayers in great difficulties. The person, if pays to the department, may have to face litigation at later stages, if any launched by the defaulter as creditor who did not receive the money though the GST provisions support the action by the debtor but whether these supersede other enactments is another area of disputes.

The debtors should take the actions with utmost caution keeping in view of the various provisions of all relevant acts to avoid any further litigations. The notices in Form GST-DRC-13 i.e. notice to a third person under section 79(1)(c) of CGST Act are likely to open floodgates of new issues for which all of us should be ready.

Disclaimer: The views of the author are personal and readers are requested to go through the relevant provisions.