

WELCOME

to the Session on

Instalment, Attachment, Prosecution, Compounding

12th March 2022

Presentation by :

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- Filing an intimation of payment (FORM GST DRC-03)(Theory and Practical) [[Rule 142\(2,3\)](#), [73\(5,8\)](#), [74\(5,8\)](#), [129\(1\)](#), [DRC-03](#)] [>>>](#)
- Applying for Deferred Payment/Payment in Instalments (FORM GST DRC-20)(Theory and Practical) [[S.80](#), [Rule 158](#), [DRC-20](#)] [>>>](#)
- Filing reply to Form GST DRC-22 against proceedings initiated for recovery of taxes(Theory and Practical) [[S.80](#), [Rule 159](#), [DRC-22](#), [DRC-23](#)] [>>>](#)
- Theory of Prosecution and Compounding in GST (Theory and Practical) [[S.132 \(offences\)](#), [134 \(cognizance\)](#), [135 \(presumption\)](#), [136 \(statement\)](#), [137 \(company offences\)](#), [138 \(compounding\)](#); [Rule-162](#); [CPD-01, 02](#); [CrPC](#)] [>>>](#)
- Viewing Prosecution Notice Issued by Tax Officials(Theory and Practical) [>>>](#)
- Filing Application for Compounding of Offence (FORM GST CPD-01) and Taking Actions in the Subsequent Proceedings(Theory and Practical) [[S.138\(1\)](#); [Rule- 162](#); [CPD-1, 2](#)] [>>>>](#)

Demand & Recovery in GST

DEMAND & RECOVERY

[Ch-XV, Ss73 to 84] [Rule 142 to 161]

Demand:-

Ss.73 to 78; and Rule 142

Forms : DRC-01 to DRC-08

Proper officer- Supdt, AC/DC and JC/ADC are Proper officers for s.73 &74 with varying monetary jurisdiction. [Circulars No.1/1/2017-GST dated 26.6.2017 and No. 3/3/2017-GST dated 5.7.2017 as amended by Circular No. 31/05/2018-GST dt 9.2.18]

How to pay?- Circular 64/38/2018-GST 14.9.18 [for creating payment liability through DRC-7, sections 129 & 130 also included to already existing Sections 73(9), 74(9) & 76(9) or 125. To facilitate EWB penalties]

Recovery:-

Ss.79 to 84; and Rule 143 to 161 [**S 85 to 90 is about liability to pay**]

Forms : DRC-09 to DRC-25

Circular 33/07/2018 dt 23.2.18 [blocking disputed credit]

Circular 42/16/2018 dt 13.04.18 [clarification on recovery of arrears]

Circular 58/32/18 Dt 4.9.18 [Recovery of wrongly availed CENVAT credit of old law and inadmissible transitional credit]

[Note:- 'whether to be recovered as old tax or GST' will be decided by circular 42/18, and 'how it will be recovered' will be as prescribed by circular 58/18]

Circular 71/45/18 GST Dt 26.10.18 [ISD recovery from Recipients only]

Concept of Proper Officer & Cross empowerment

➤ Who is the **Adjudicating Authority**?

Section 2(4):- Any authority, appointed or authorized to pass any order or decision under GST Act.

➤ Who is **not an Adjudicating Authority**?

Following are not covered under the ambit of adjudicating authority:

- | | |
|---|--------|
| (a) Central Board of Indirect Taxes and Customs | [CBIC] |
| (b) Revisional Authority, | [RA] |
| (c) Authority for Advance Ruling, | [AAR] |
| (d) Appellate Authority for Advance Ruling, | [AAAR] |
| (e) The Appellate Authority | [AA] |
| (f) The Appellate Tribunal | [AT] |
| (g) The Anti Profiteering Authority u/s171 (2) | [APA] |

Implication:- An order passed by the above could not be contested before the Appellate Authority.

1st Appeal (with AA u/s 107) is against the order passed by the Adjudicating Authority.

Concept of 'Proper Officer' in GST

“PROPER OFFICER” IN GST LAW

- In GST law various actions are prescribed to be taken by “proper officer”.

Who is this Proper officer ?

- S.2(91)- “Proper officer” in relation to any function to be performed under CGST Act means
 - the Commissioner [that u/s 3] or
 - the officer of the Central Tax who is assigned that function by the Commissioner in the Board. [that u/s 168]

Who is the Commissioner referred to in S.2(91)?

- S.2(24)- “Commissioner” means the commissioner of Central Tax and includes the Principal Commissioner of the Central Tax appointed under Section 3 and the Commissioner of Integrated tax appointed under the IGST Act.
- S.2(25)-“Commissioner in the Board” means the Commissioner referred to in section 168.

SECTION 3. Officers under this Act. — The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely :—

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax, [PCC or PDG]
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax, [CC or DG]
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax, [PC or PADG]
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax, [Commr or ADG]
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax, [ADC or AD]
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax, [JC or JD]
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax, [DC or DD]
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, [AC or AD] and
- (i) any other class of officers as it may deem fit :

Provided that the officers appointed under the Central Excise Act, 1944 (1 of 1944) shall be deemed to be the officers appointed under the provisions of this Act.

- As per Section 168(2), the ‘**commissioner**’ specified in S.2(91), s.5(3), S.25(9)(b), S.35(3 &4), S.37(1),S.38(2), S.39(6), S.66(5), 143(1), S.151(1), S.158(3)(l) and S.167 **shall mean a commissioner or joint secretary posted in the Board** and such commissioner or Jt Secretary shall exercise the powers specified in the said sections with the approval of the Board.
- **S.2(16)-Board:-** “Board” means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963.
- **Thus,** As per S.168(2) the word ‘Commissioner’ used in the definition of ‘Proper Officer’ in S.2(91) is not the executive commissioner. Instead, it the Commissioner or Joint secretary posted in the Central Board of Indirect Taxes and Customs, New Delhi.
- **S.(29)- Competent Authority:-** means such authority as may be notified by the Government. [His functions are not clear from CGST Act]

Provisions where the word used “Commissioner” refers to ‘Commissioner or JS posted in CBIC:-

1. S.2(91)- the definition of proper officer
2. S.5(3)- which says that commissioner can delegate any of his powers to any of his subordinates.
3. S.25(9)(b)- UIN to specialized UN agencies of notified entities.
4. S.35(3 & 4)- notifying class of persons for maintain additional records or relaxing the present requirement of records maintenance.
5. S.37(1)- Notifying the extension of time limit to file GSTR-1
6. S.38(2)- Notifying the extension of time limit to file GSTR-2
7. S.39(6)- Notifying the extension of time limit to file GSTR-3
8. S.66(5)- Determination of expenses for special audit and remuneration of the special auditor (CA/CMA). [note- the Commissioner u/s 66(1) is executive commissioner]

9. **143(1)**- notifying goods i/r/o which the Principal will not have to declare the Job-workers premises who is URD and from where the job-worked goods are cleared directly.
10. **S.151(1)**- Directing collection of statistics relating to matter dealt with by or in connection with CGST Act.
11. **S.158(3)(I)**- opining for disclosure and publication of information relating to any class of taxable persons or class of transactions, in the public interest.
12. **S.167- delegation of power**- notifying/directing power of any CGST officer / authority to be exercised also by another authority or officer.
13. **S.168- Power to issue instructions or directions.** — (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions

Gist of Circulars Specifying Proper Officers:-

The 'Proper officer' has been specified vide CBIC Circular No. 1/1/2017-GST dated 26.6.2017 and No. 3/3/2017-GST dated 5.7.2017 as amended by Circular No. 31/05/2018-GST dt 9.2.18.

- Inspector:- Inspection of stock and road check
- Superintendent:-
 - Compulsory registration [S.25(8)]
 - Amendment of Registration [S.28]
 - Cancellation of Registration [S.29]
 - Demand of tax when goods or services are not accounted for [S.35(6)]
 - Scrutiny of Returns [S.61]
 - Issue summons [S.70]
 - Issue of SCN u/s 73, 74 (upto 10 lakh only CGST+Cess; 20 lakh CGST+ IGST + Cess) and confirmation of demand [S.73, 74]

Questionn:- Proper officer for S.73 & 74 is Superintendent. Can the Commissioner issue the SCN and adjudicate it?

- Deputy / Assistant Commissioner
 - Composition scheme declaration etc [S.10]
 - Registration of casual taxable person [S.27]
 - Cancellation or revocation of registration [S.30]
 - Refunds [S.54]
 - Assessment [S.60, 63]
 - Audit [S.65]
 - Issue of SCN u/s 73,74 (amt 10 lakh to 1 cr CGST+Cess; 20 lakh to 2 cr CGST+ IGST+Cess) and confirmation of demand [S.73, 74]
 - Demand of tax collected but not paid [S.76]
 - Recovery [S.79]
 - Detention of conveyances in transit [S.129]
 - Confiscation of goods and conveyances [S.130]
 - Refund if duty paid goods returned after 1.7.17 [S.142(1)]

- Joint / Additional Commissioner
 - Ordering search and seizure [S.67]
 - Authorizing access to premises and inspection of books of account [S.71]
 - Issue of SCN u/s 73,74 (amt above 1 cr CGST+Cess; above 2 cr CGST+ IGST+Cess) and confirmation of demand [S.73, 74]
 - Declaring transfer of property void [S.81]
 - Immediate sale of seized perishable goods [S.129(6)]
- Principal commissioner / Commissioner
 - Return of seized goods [S.67(7)]
 - Recovery proceedings before completion of period of three months [proviso to S.78]

Cross Empowerment & Delegation of Power:-

- **S.5(2):** Subordinate officer's powers and duties can be discharged by superior.
- **S.6(1):** SGST/UTGST officers to be proper officers under CGST Act (subject to notified conditions)
- **S.6(2):** (a) CGST officer issuing order will also issue order under SGST Act
[i.e. orders u/CGSTA to be backed by corresponding order u/SGSTA]
(b) No proceeding under SGST act, if initiated under CGST Act.
[i.e. No proceedings u/CGSTA if proceedings initiated u/SGSTA]
- **S.6(3):** Rectification, appeal etc of Orders u/CGST Act not to be under SGST Act
[i.e. orders u/CGSTA not appealable u/SGSTA]
- **S.167: Delegation of powers:-** Commissioner may by notification direct that any power exercisable by any CGST authority /officer may be exercisable also by another authority / officer.
- **S.72: Officers to assist Proper officer:-** Police, Railways, Customs & other notified officers to assist GST officers.

- S.5(2)- an officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

Qn:- Proper officer for S.73 & 74 is Superintendent. Can the Commissioner issue the SCN and adjudicate it?

- S.2(91)- “**Proper officer**” in relation to any function to be performed under CGST Act means the Commissioner or the officer of the Central Tax who is assigned that function by the Commissioner in the Board.
- S.2(24)- “**Commissioner**” means the commissioner of Central Tax and includes the Principal Commissioner of the Central Tax appointed under Section 3 and the Commissioner of Integrated tax appointed under the IGST Act.
- S.2(25)-“**Commissioner in the Board**” means the Commissioner referred to in section 168.
- As per Section 168(2), the ‘**commissioner**’ specified in S.2(91), s.5(3), S.25(9)(b), S.35(3 & 4), S.37(1), S.38(2), S.39(6), S.66(5), 143(1), S.151(1), S.158(3)(1) and S.167 **shall mean a commissioner or joint secretary posted in the Board** and such commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

Governing Provisions for Demand

[I] Governing Provisions for Demand:-

S.73-Determination of [tax not paid or short paid or erroneously refunded] or [input tax credit wrongly availed or utilized] for any reason other than fraud or any willful mis-statement or suppression of facts to evade tax.

[Note-it is not about already assessed tax of S.79]

S.74- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful mis-statement or suppression of facts to evade tax.

S.75-General Provisions relating to determination of tax >>

S.76-Tax collected but not paid to the government [different treatment. Waiver of SCN / penalty/proceedings does not apply. The only opportunity of paying it without penalty is to pay it with interest within 30 days from the due date of payment. Otherwise, SCN u/76(2) with equal penalty [other provisions say different amounts of penalty- see next slide] and interest , PH on request , OIO within 1 year from SCN, Stay period excluded, amt paid is appropriated, surplus will go to fund or incidence bearer, incidence bearer can claim refund.

S.77 CGST r/w s.19 IGST-Tax wrongly collected and paid to Central Government or State government shall be refunded in the prescribed manner / condition. Correct tax to be paid without interest.

S.78- Initiation of recovery proceedings [if not paid within 3 months (or earlier in expediency)]

Rule 142- Procedure for Notice and order for demand of amount payable under the Act.

Qn.- How much penalty to be specified in SCN for tax collected but not remitted to Govt?

Ans- S.73(11) prescribes 10% tax or Rs 10000/-, whichever higher (and no waiver of SCN or penalty) if payment of self assessed tax or any amount collected as tax is delayed beyond thirty days from the due date of payment.

- **S.76(2)** prescribes an equivalent penalty i.e. 100% tax.
- However **Circular 76/50/2018 dt 31.12.18** says that for late filed GSTR-3Bs, a general penalty upto Rs. 25000/- u/s 125 and not the penalty of s.73(11) is to be imposed after following due process. [Can circular go beyond the Section ?]
- **S.122(1)(iii,iv)** prescribes for 100% tax or Rs.10000/-, whichever higher, if delay is beyond 3 months.

➤ **It Appears from combined reading of 73(11,9), 76(2) & 122(1)(iii,iv) and the circular that-**

- (a) If the remittance of collected tax is delayed beyond 30 days, then 10% tax or Rs 10000/-, whichever higher u/73(11 r/w 9) or if circular is obeyed then only upto 25000/-.
- (b) If the remittance of collected tax is delayed beyond 3 months, then 100% tax or Rs 10000/- u/s 122.

PRE-NOTICE CONSULTATION

[brought in by 6th Amendment Rules vide n/n 49/2019 CT 9.10.19]

[made optional by amending Rule 142(1A) by notification 79/2020 CT 15.10.20]

New Rules: [Recently brought in by 6th Amendment Rules vide n/n 49/2019 CT 9.10.19]

- **Rule 142(1A):-** The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**]
- **Rule 142(2):-** Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),] he shall inform the proper officer of such payment in **FORM GST DRC-03*** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04***.
- **Rule 142(2A):-** Where the person referred to in sub-rule (1A) 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 **Part B of FORM GST DRC-01A.**]

Governing Provisions for Recovery

[II] Governing Provisions for Recovery:-

S.78- Intimation of recovery proceedings [if not paid within 3 months from the order (or earlier in expediency in revenue interest)]

S.79- Recovery of Tax [six modes of recovery]

S.80- Payment of tax / any amount due (other than assessed liability in return), in extended time or in maximum 24 **installments**.

S.81- Charge on or **Transfer of property to be void** in certain cases [if intended to defraud govt revenue]

S.82- Tax to be first charge on property

S.83- Provisional attachment to protect revenue in certain cases

S.84- Continuation and validation of certain recovery proceedings

[S 85 to 90 is about liability to pay in various situations. Refer next 3 slides]

Rule 143 to 161-

[For Rules, Please move to 5 slides ahead]

Governing Provisions for Liability to pay in certain cases:- Chapter XVI: - [Ss 85 to 94]

Merger, Liquidation, Firm, Constitution changed, Guardian/Trustee, Guardian/ Trustee after termination, Court of Ward, HUF/AOP, Death

Sec	Situation	Who is liable ?
85	Transfer of business	TP & the transferee are Jointly & Severally liable for tax upto the time of transfer.
86	Agent and Principal	Both. Jointly and severally
87	Amalgamation/merge r of companies with retro effect	Transactions between commencement date and Cort's order date will be added to the turnover of the respective companies.
88	Company in liquidation	Every appointed receiver of assets will intimate to the Commr within 30 days of appointment. In case of private company where dues can not be recovered, every director (during period of default) will be jointly & severally liable (unless he proves against gross neglect, misfeasance or breach or duty.
89	Liability of directors of private company	every director (during period of default) will be jointly & severally liable (unless he proves against gross neglect, misfeasance or breach or duty. S.89 overrides the companies Act, 2013.
90	Partners of firm	The firm and each of its partners, jointly & severally. Until retiring partner intimates to the Commr.

Section	Situation	Who is liable ?
91	Guardians, trustees, agent of minor / incapacitated	Guardian, trustee or agent. As if he himself was conducting the business (and not on behalf of).
92	Court of Wards, in whose control the business assets are there	Court of wards, Administrator General, The official trustee, or any receiver or manager.
93	Special cases:	
	After death of Taxable person, business continued through representative or any other person	The representative, or the said person
	Business discontinued before / after death of Taxable person	His legal representative will pay out of the estate of the deceased, to the extent the estate is capable.
	Partition of HUF/AOP among group of persons	Each member is jointly and severally liable for dues upto the time of partition.
	Firm dissolved	Every partner (for dues upto the time of dissolution)
	Guardianship / trust terminated	The ward or the beneficiary will pay the liability of guardian/trust till the time of termination.

Section	Situation	Who is liable ?
94	Other cases:	
	Firm/AOP/HUF discontinued business	Every person who was a member at the time of discontinuance of business.
	Firm's Constitution changed	Regardless of S.90, every partner is liable jointly & severally for dues till the change of constitution.
		Same will apply on HUF and AOP also.
Note: firm includes LLP also. Court means District court, HC, SC		

RULES

Rules: [for Demand (142) & Recovery (143 to 161)]

- 142-[S.73(1),74(1),76(2) /DRC-1 to 8]- Notice and order for demand of amounts payable. Pre-Notice Consultation.
- 143-[S.79(1)(a) /DRC-9]- Recovery by deduction from any money owed
- 144-[S.79(1)/DRC-10 to 12]- Recovery by sale of goods under the control of proper officer.
- 145- [S.79(1)(c) /DRC-13 to 14]- Recovery from a third person
- 146- [DRC-15]- Recovery through execution of a decree etc.
- 147- [DRC-16. 17, 11, 12]- Recovery by sale of movable or immovable property.
[DRCs are notice for attachment and sale(16), auction(17), successful bidder(11), sale certificate(12), u/s 79(1)(d)]
- 148- Prohibition against bidding or purchase by officer
- 149- Prohibition against sale on holidays
- 150- Assistance by police
- 151- [DRC-16]- Recovery Attachment of debts and shares etc.
- 152-Attachment of property in custody of courts or Public Officer
- 153- Attachment of interest in partnership
- 154- Disposal of proceeds of sale of goods and movable or immovable property

Rules:

155- [DRC-18]- Recovery through land revenue authority

156- [DRC-19]- Recovery through court

157- Recovery from surety

158- [DRC-20, 21]- Payment of tax and other amounts in installments

159- [DRC-22, 23]-Provisional Attachment of property

160- [DRC-24]- Recovery from company in liquidation

161- [DRC-25]- Continuation of certain recovery proceedings

FORMS

Forms: [Demand: DRC-1 to 8 u/r 142; Recovery: DRC-9 to 25 u/r 143 to 161

DRC-01- Summary of Show cause **notice** [R.142(1)(a) r/w Ss 73(1), 74(1) & 76(2) i.e. for bonafide/malafide short payment.. & for tax collected but not remitted]

DRC-02-Summary of **Statement** [R.142(1)(b) r/w S.73(3)/74(3) for repeat SCN if grounds are the same. (as per 73(4): deemed SCN)]

DRC-03- **Intimation** of payment made voluntarily or made against the SCN or Statement.

DRC-04- **Acknowledgement** of acceptance of such voluntary payment.

DRC-05- Intimation of **conclusion** of proceedings.

DRC-06- **Reply** to the SCN

DRC-07-Summary of the **order** [i.e. Adjudication order OIO]

DRC-08- **Rectification** of order

DRC-09- Order for recovery through specified officer u/s 79

DRC-10- Notice for Auction of goods u/s 79(1)(B)

DRC-11- Notice to successful bidder

DRC-12- Sale Certificate

DRC-13- Notice to a third person u/s 79(1)(c)

DRC-14- Certificate of payment to a Third person

DRC-15- Application before the Civil Court requesting execution of a decree

DRC-16- Notice for attachment and sale of immovable / movable goods / shares u/s 79.

DRC-17- Notice for auction of immovable / movable property u/s 79(1)(d)

DRC-18- Certificate Action u/s 79(1)(e)

DRC-19- Application to the Magistrate for recovery as fine

DRC-20- Application for deferred payment / payment in instalments

DRC-21- Order for acceptance / rejection of application for dererred payment / payment in instalments.

DRC-22- Provisional attachment of property u/s 83

DRC-23- Restoration of provisionally attached property / bank account u/s 83

DRC-24- Intimation to liquidator for recovery of amount.

DRC-25- Continuation of recovery proceedings

SUMMARY TABLES

Proper officer for S.73 & 74: (PO is Supdt as per cir 3/17 dt 5.7.17. But superior can exercise subordinate's powers u/s.5(2), monetary jurisdiction is distributed for SCN & OIO by-

Circular **31/05/2018-GST** dt.09.02.2018:

	Proper officer	Only CGST including Cess	Only IGST including Cess	CGST & IGST including Cess
	Superintendent of Central Tax	Upto Rs 10 lakh	Upto Rs 20 lakh	Upto Rs 20 lakh
	Deputy/Assistant Commissioner of Central Tax	Above Rs. 10 lakh & upto Rs. 1 crore	Above Rs. 20 lakh & upto Rs. 2 crore	Above Rs. 20 lakh & upto Rs. 2 crore
	Additional/Joint Commissioner of Central Tax	Above Rs. 1 crore without any limit	Above Rs. 2 crore without any limit	Above Rs. 2 crore without any limit

- Officers of Audit Commissionerates & Directorate General of GST Intelligence (DGGSTI) have power only to issue SCN.
- Adjudication thereof will be by the officers of the executive commissionerate having jurisdiction over principal place of business of the noticee.
- If there are multiple noticees falling in different jurisdictions, it will be adjudicated by the proper officer of that Commissionerate in whose jurisdiction the principal place of business of the noticee with the highest demand falls.
- If the SCN involves more than 5 cr amount, it will be adjudicated by an officer of the rank of Additional Director / Additional Commissioner (as assigned by the Borad), who shall not be on the strength of DGGSTI and working there at the time of adjudication.
- If on the similar issues SCNs have also been issued by other adjudicating authorities, then all such SCNs will be adjudicated by the adjudicating authority competent to decide the case involving the highest amount.

	Non-fraudulant of S.73 [2 occasions of no penalty]	Fraudulant cases of S.74 [3 occasions of low penalty]	Sub-Section
Before SCN (voluntary compliance)	Tax + Int + no penalty Exception- 10% tax as penalty payable if self assessed tax or amt collected as tax not paid within 30 days from the due date. [refer S.76]	Tax + Int + 15% tax as penalty	73(5)/74(5) 73(11) 75(12)
Before OIO (Within 30 days of notice) (to conclude proceedings)	Tax + Int + no penalty	Tax + Int + 25% tax as penalty	73(8)/74(8)
In OIO	Tax + Int + 10% penalty (or 10,000/-, higher)	Tax + Int + due penalty	73(9)/74(9)
After OIO (Within 30 day of communication)		Tax + Int + 50% of imposed penalty (to conclude proceedings)	74(11)

	Non-fraudulant cases of S.73	Fraudulant cases of S.74	Sub-Sections
Time limit for OIO	3 years from -Due date of Annual return for FY the tax pertains to -Date of erroneous refund	5 years from -Due date of Annual return for FY the tax pertains to -Date of erroneous refund	73(10)/74(10)
Time limit for SCN / Statement	At least 3 months prior to above time line.	At least 6 months prior to above time line.	73(2)/74(2)

▪Once a SCN has been issued, **repeat notices** may be issued in the form of '**Statement**'. Its service will be deemed to be service of notice, if grounds relied upon are the same [only to save paper]. **[73(3)]**

Note- In suppression cases, charges of fraud, willful misstatement, suppression of facts to evade tax can not be sustained for later periods. So statement of 74(3) will be deemed to be a notice u/s.73(1).

- No SCN if voluntarily paid as allowed. However, SCN for the difference to be given. **[73(6,7)]**
- Proceedings conclude also against the co-noticee. But prosecution not covered. **[Exp1 to 74]**
- Suppression means information required to be stated, reported, called for **[Exp2 to 74]**

Thus, Chance to avoid penalty is	Up to 30 days after issuance of SCN	Penalty unavoidable	
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DETAILS OF PROVISIONS

- Determination of tax **not/short paid or erroneously refunded**
- Bonafide & Malafide cases [S.73, 74], [T=Tax, I=Interest, P=Penalty]
 - Time limit
 - For Adjudication **Order**: 3 years & 5 years [S.73(10)/74(10)]
 - For Show cause cum demand **notice**- at least 3 months / 6 months prior to respective time line for order. [S.73(2)/74(2)]
 - Statement in lieu of SCN [for repeat notices with same grounds] [S.73(3)/74(3)]
 - Voluntary / reconciliatory payment
 - **S.73**-TI before or within 30 days of SCN; [S.73(5)]
 - TI+10% tax on adjudication,
 - penalty must if tax collected not paid within 30 days of due date;
 - **S.74**- TI+15% tax before notice, [S.73(5)]
 - TI+25% tax within 30 days of notice,
 - TI+50% penalty within 30 days of OIO

Cross Empowerment & Delegation of Power:-

- S.5(2): Subordinate officer's powers and duties can be discharged by superior.
- S.6(1): SGST/UTGST officers to be proper officers under CGST Act (subject to notified conditions)
- S.6(2): (a) CGST officer issuing order will also issue order under SGST Act
(b) No proceeding under SGST act, if issued under CGST Act.
- S.6(3): Rectification, appeal etc of Orders u/CGST Act not to be under SGST Act
- S.167: Commissioner may delegate power of on authority to another.
- S.72: Police, Railways, Customs & other notified officers to assist GST officers.
- S.79(3)- State officer will recover CGST as if it is SGST arrears.

About the SCN:

1. Must be issued within time.
2. Reasons specified therein must be specific and not vague.
3. Nature of contravention must be specified.
4. Must specify the charge / allegations and grounds.
5. Proposed penalty must be mentioned.
6. Amount of tax along with payable interest to be specified.
7. Must be served on the noticee in the prescribed manner.
8. No SCN in respect of amt voluntarily paid.
9. **Different treatment to S.76 default:-** In case of non-payment of self assessed tax and the amount collected as representing tax, the **option to avoid penalty** by paying such tax before issuance of SCN or within 30 days of SCN is **not available**. OIO must impose penalty **[how much?]**. Also, time limit to adjudicate is 1 year only u/s 76(6).
 - Noticee can contest by filing reply and also by appearance.
 - Adjudicating authority to pass speaking order considering all the submissions made.

➤ General Provisions :- [details on next two slides]

- S.75-Stay period excludible,
- waiting period for appeal decision excludible,
- If suppression not upheld,
- PH on request and when adverse decision,
- max. 3 adjournments,
- speaking order,
- confined to SCN,
- If Tax modified Interest, Penalty too,
- Interest even if not specified,
- proceedings conclude if not decided within 3/5 yrs.

- Stay period (for SCN or OIO) is excluded in computing 3 yrs/5 yrs [75(1)]
- If suppression not upheld in appeal, the tax payable will be determined for normal period under the same SCN. [75(2)]
- Any order pursuant to direction by Commr (appeal)/CESTAT will be issued within two years from communication. [75(3)]
- Give PH if requested for, and also when adverse decision contemplated. [75(4)]
- Not more than 3 adjournments [75(5)]
- Speaking order [set out relevant facts and basis for decision] [75(6)]
- OIO to confine to SCN. I.e no excess amt, no new ground. [75(7)]
- If tax modified in appeal, then interest, penalty also stands modified. [75(8)]
- Interest payable even if not specified in OIO [75(9)] [what if not demanded in SCN?]
- If not decided within 3/5 years, the adjudication proceeding is deemed concluded. [75(10)]

▪ If any adverse decision of Commr (A), CESTAT, HC is appealed against, and any SCN is to be decided in light of its decision, then pendency period of such appeal shall be excluded in computing 3/5 yrs. [75(11)]

▪ No SCN needed for unpaid part of the tax **already self assessed** in S.39 return. Direct recovery under S.79. [75(12)] [inconsistent with 73(11)?]

▪ If penalty is imposed under S.73/74, then no penalty for the same act under any other provision. Eg under s.122(2). [75(13)]

▪ SCN process applies for interest part also.

▪ If proceeding against main person concludes u/s 73, 74, then it is deemed concluded also against all other persons under that SCN who are liable under Ss. 122,125,129,130. But 'all proceedings' does not include prosecution proceedings under s 132. [Explanation 1 to S.74]

▪ '**suppression**' means non-declaration of fact/information which a Taxable person is required to state/declare/report under GST Act/Rules, or called for by the proper officer. [Explanation 2 to S.74]

➤ Tax collected but not deposited with the Government [S.76]

- Amt collected as tax (even on non-taxable supplies) to be paid forthwith. [76(1)]
- If not paid, SCN for tax + equivalent penalty to be issued. [76(2)]
- no time limit for SCN but 1 yr for OIO. [A different timeline] [76(6)]
- Court stay period excluded for computing one year [76(7)]
- deposited amt (i.e. total collected or determined by officer) to be adjusted against tax liability. [76(9)],
- Surplus will be refunded to incidence bearer or CWF [76(10)]
- Incidence bearer will apply for refund under S.54. [76(11)]

➤ Tax wrongfully collected (eg C+S instead of IGST) and deposited with Government [S.77]

- Correct tax to be paid without int.,
- incorrect tax to be refunded subject to unjust enrichment and other conditions.

➤ Initiation of recovery proceedings- [S.78]

- Adjudicated tax payable within 3 months from service of OIO, failing which recovery proceedings to be initiated.
- Officer can require an earlier payment after recording the expediency.

■ Recovery of tax

[S.79]

By any one or more modes,

- (1) Deduct from defaulter's money under control of officer or his counterparts
- (2) Detain & sell his goods under control of dept
- (3) Garnishee proceeding
- (4) Distrain & detain & sell movable/immovable property in defaulter's belonging/control
- (5) Certificate proceeding
- (6) Appln to Magistrate.

- If bond is there, recovery will be by mode specified therein [79(2)]
- State officer will recover central tax as if it is state tax
- If recovery is less than the arrears, then apportion in the ratio of dues of Centre and the State. [79(3)]
- **Note- [w.e.f. 1.2.19]**- 'Person' will include 'distinct person'. Means, your arrears can be recovered from your inter-state branch also. [Explanation to 79]

■ Payment of tax and other amounts in instalments

[S.80]

allowed by Commr/CC, with interest & other conditions, but not self assessed tax in return, on single instalment default whole outstanding balance recoverable without any further notice.

- Transfer of property to be **void** in certain cases [S.81]

Intention to defraud must, the defaulter creates any charge on any property in his belonging / possession. But not void if- for consideration +without knowledge , or with prior permission.

- Tax to be **first charge** on property [S.82]

Property of defaulter/other person, overriding provision

- Provisional **attachment** [S.83]

To protect revenue, for 1 year, in case of S.62 (non-filers of return), S 63 (of un-registered persons), S 64 (Summary assessment by ADC), 67 (inspection, search, seizure), 73, 74 (determination of tax/ITC & erroneous refund)

- **Continuation** of certain recovery proceedings [S.84]

Dues enhanced in appeal etc – fresh demand only for diff., if dues reduced- then no fresh demand, recovery proceedings to continue ahead from stage where halted.

- Liability to pay in **certain cases** [S.85 to S.94]

Merger, Liquidation, Firm, Constitution changed, Guardian/Trustee, Guardian/ Trustee after termination, Court of Ward, HUF/AOP, Death

Circular 33/07/2018 dt 23.2.18 [blocking disputed credit]:-

- Disputed credit held inadmissible in the last OIO or OIA that existed on 1st July 2017 will be carried forward, but will not be utilized until that OIO or OIA is in existence (i.e. until appeal against it?)
- If utilized, the same will be recovered with interest.
- Undertaking to this effect needed if the amount is above 10 lakh. If less than that, only non-utilization will do.
- Do not transition the old credit which is blocked in GST by Section 17(5). Eg. Telcom tower, out-factory pipeline. If carried forward and utilized, then to be recovered with interest & penalty.

Circular 42/16/18-GST dt 13.4.18

[Note:- 'whether to be recovered as old tax or GST' will be decided by circular 42/18, and 'how it will be recovered' will be as prescribed by circular 58/18]

- **Recovery of wrongly availed Cenvat Credit:-** If recovery of credit is arising from appeal, review, reference, then such credit will be recovered as CGST arrear. Thus, the amt recovered will not be admissible as ITC in GST.

[Thus, S142(6)(b)- old credit in Appeal:- (a)Recover as GST (b)refund in cash. If rejected, let it lapse]

- **Recovery of Cenvat Credit of Ex/ST carried forward wrongly:-** inadmissible credit transitioned u/s 140 will be recoverable under Section 79. This is treated as 'Payable amount under GST', and so, the proper officer shall proceed to recover by one or more of the specified modes u/79(1)(a to f).

[Thus, wrongly transitioned old credit not conforming to s.140:- directly recover u/s79 by creating liability in part B of credit ledger and debiting it from credit or cash ledger (int, penalty, fee only from cash ledger)]

- **Recovery of arrears of Central Excise duty and service tax:-**

(a) recovery of such tax, interest, fine, penalty arising from assessment/adjudication will be recovered as CGST arrears. Thus, the amt recovered will not be admissible as ITC in GST.

[Thus, S142(8)(a)- old tax in Adjudication:- Recover as GST]

(b) If what is recoverable is the old regime output duty/tax, and its recovery is arising from appeal/review/reference:- then it will be recovered as GST output tax arrear.. Thus, the amt recovered will not be admissible as ITC in GST.

[Thus, S.142(7)(a)- old tax in Appeal:- Recover as GST]

- Recovery of arrears due to revision of return under the existing law:- will be recovered as CGST tax arrear. Amt recovered will not be admissible as ITC. [S.142(9)(a)]

[Thus, S142(9)(a)- old tax/credit in Revised Return:- Recover as GST]

- **Old tax in old period returns filed now:-** File return on 'www.aces.gov.in' and pay central excise duty / service tax on EASIEST i.e. 'cbec.easiest.gov.in' through ICEGATE portal from April 18.
- **Arrears against old assessee, not registered in GST:-** Recover in cash as per pre-para through ICEGATE

➤ **Procedure for recovery:-**

- **Credit** of Old regime excise duty/Service tax/wrongly availed credit (which is transitioned)- to be paid back from credit ledger (PMT-2) or cash ledger (PMT-5) of GST, and before that it shall be recorded in Part II of the Liability ledger(PMT-01).

The Conclusion:- Thus, old tax/old credit arising out of old law disposal & also the inadmissible transitional credit is required to be recovered as GST tax arrear (i.e. by creating liability in taxpayer's liability ledger, and then realizing it either through credit ledger or cash ledger).

Note :- Subsequent Circular 58/2018-GST dt 4.9.2018 **gave alternate method** for recovery, as functionality for complying the above Circular 42/2018 dt 13.4.18 was not available on the portal.

Circular 58/2018-GST dt 4.9.2018 gave alternate method for recovery, as functionality for complying the above Circular 42/2018 dt 13.4.18 was not available on the portal. It prescribed under its para 3 that-

- *Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of **FORM GSTR-3B**. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of **FORM GSTR-3B**.*

[**The Conclusion:-** Thus, the conjoint reading of both the circulars 42/18 dt 13.4.18 & 58/18 dt 4.9.18 gives to understand that 'as to what tax it will be recovered as' will be decided by circular 42/18, and 'as to how it will be recovered' will be as prescribed by circular 58/18 i.e. recovery by mentioning the amount in table 4(B)(2) of GSTR-3B (i.e. as other reversals). Thus, the requirement of liability creation in the taxpayer's liability ledger is skipped.

➤ Old Tax (Cex, Service Tax) in old period returns filed now:-

File return on 'www.aces.gov.in' and pay central excise duty / service tax on EASIEST i.e. 'cbec.easiest.gov.in' through ICEGATE portal from April 2018.

➤ Arrears against old assesses, not registered in GST:-

Recover in cash as per above method, i.e. through ACES/ICEGATE.

New Circular 64/38/2018-GST 14.9.18

- in Eway bill related minor default, Rs 500+500 u/s125 is to be imposed and this amt is to be recovered by way of DRC-7, the demand note in terms of R-142(5). This 142(5) order will be treated as recovery notice.

Note- The liability, through DRC-7 route can be created by an officer only on any taxpayer of his own jurisdiction. In such a situation, problem arises when consignment of any other jurisdiction is detained by the officer. In practice, we have been getting this liability created by the taxpayer himself through the DRC-03 route.

New Circular 71/45/18 GST Dt 26.10.18 on ISD recovery

Para 3- Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act.

Clarification-

1. According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.
2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount **voluntarily** along with interest if any by using **FORM GST DRC-03**.
3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of **section 73 or 74** of the CGST Act as the case may be. **FORM GST DRC-07** can be used by the tax authorities in such cases.
4. It is further clarified that the **ISD would also be liable to a general penalty** under the provisions contained in section 122(1)(ix) of the CGST Act.

Circular 33/07/2018-GST Dt 23.02.18 blocking of disputed credit if transitioned :-

- Disputed credit held inadmissible in the last order-in-original or order-in-appeal that existed on 1st July will be carried forward, but will be kept as blocked (i.e. will not be utilized) till that OIO or OIA is in existence
- Undertaking to this effect will be needed if the amount is above Rs. 10 lakh, otherwise only blocking will do.
- If utilized, the same will be recovered with interest.
- Note- The old credit which happens to be a blocked credit u/s 17(5) in GST should not be transitioned. Eg. Telcome Tower, Out factory pipeline. If transitioned, it is recoverable with interest & penalty.

Prosecution

[Section 132: Punishment for certain offences]

Prosecution

- Main Offences:- For 12 offences specified in S. 132:-

Offence involving--	Punishment (Imprisonment extending to--)
Tax evaded > Rs.500 lakh	5 years and fine
Tax evaded > Rs.200 lakh but < Rs.500 lakh	3 years and fine
Tax evaded > Rs.100 lakh but < Rs.200 lakh	1 year and fine

- Abetment in :- If commits or abets in faking/falsifying accounts, obstructs/prevents officer, tamper with evidence - upto 6 months and/or fine
- Repeat Offences:- Second or subsequent conviction for offence under this section punishable with imprisonment extending to 5 years and fine
- Min. 6 months:- For special and adequate reasons the said imprisonments may be for a period not less than 6 months [min. 6 months unless there are special / adequate reasons for less than 6 months]

Prosecutable Offences

The 12 major offences [Section 132]]

- a) Making a **supply without invoice** or with false/incorrect invoice [intend to evade tax]
- b) Issuing an **invoice without making supply** [leading to wrongful ITC/Refund] [thus, if buyer hasn't availed credit, then only civil action u/s122 is attracted]
- c) Availing ITC on such invoice [malafide intention not required]
- d) Not paying amount collected as **tax** for a period > 3 months [malafide intention not required. See S.76 also]
- e) Tax evasion / fraudulent ITC or refund other than above [no intent required]
- f) Furnishing **false** information/**falsification** of financial records/production of **fake** accounts/documents [with intent to evade payment of tax]

Prosecutable Offences

- g) **Obstructing/preventing** any official in discharge of his duties under CGST Act.
- h) **acquiring/transporting/Dealing** in or concerning any ways with goods liable to confiscation [with knowledge or reason to believe that goods are of confiscable nature]
- i) **Receiving/dealing** with supply of **services** in contravention of the Act [with knowledge or reason to believe that they are in contravention of Act/Rules]
- j) Tampering / destroying any material evidence or documents [no intent required]
- k) Failing to supply any **information required** of him under the Act/Rules or supplying false information [unless under reasonable belief. Onus on him to prove]
- l) **Attempting** to commit or **abetting** the commission of any of the above **11 offences** [mens-rea?]

Twelve PROSECUTABLE OFFENCES u/s 132(1) (from the Act)

132. (1) Whoever commits or causes to commit and retain the benefit arising out of any of the following offences, namely:—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b);

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

Other Related provisions:

- S.67- Power of inspection, search and seizure [when TP/transporter are in default]
- S.68- Inspection of goods in movement [R-138 EWB; Circular No. 41/15/2018-GST dated 13.04.18 i/r/o Interception procedure]
- S.69-Power to arrest [first four of 12 prosecutable offences of s.132(1) involving above 2 crore & repeat conviction]
- S.70- Power to summons persons to give evidence and produce documents
- S.71- Access to business premises [for Audit, scrutiny, verification, necessary checks for revenue safeguard. Authorization by JC & above]
- S.72- Officers to assist proper officers [police, railway, customs, land revenue, state tax, other notified]

- Rule-139- Inspection, search and seizure [authorization INS-1; seizure order INS-2, Prohibition order INS-3, inventorization]
- Rule-140- Bond and security for provisional release of seized goods [INS-4 bond for full value with BG for amt of tax+penalty]
- Rule-141-Procedure in respect of seized goods [final release in INS-5 if things are perishable/hazardous & lower of Market price or payable tax+int+penalty is paid. If not paid, Commr to dispose and appropriate the proceeds]

➤ S. 69- Power to Arrest:-

The Commissioner of CGST may by order authorise any Central Tax officer to arrest a person if he has reasons to believe that the person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section.

[i.e. first four of 12 prosecutable offences of s.132(1) involving above 2 crore & repeat conviction]

➤ **Arrest:** in cases [S.69] [first four above 2 crore & repeat conviction]

1. The following four offences [u/s132(1)] are committed, and the amount of tax involved is above 2 crore
 - i. Supply without invoice
 - ii. Invoice without supply
 - iii. Claiming credit on such invoice
 - iv. Collecting tax and not remitting to govt.
2. Repeat conviction in any of the twelve offences u/s 132(1)

cognizable offences in GST [132(4)] - All the 12 prosecutable offences are non-cognizable & bailable except:

(a) the first four [i.e. supply w/o inv, inv w/o supply, taking credit on such inv, not remitting the collected tax], and

(b) where amount exceeds Rs 5 cr, and

➤ Thus, the first four for above 5 cr amt are cognizable & non-bailable. All others are bailable.

Bail:-

- In cognizable / non-bailable [132(5)]
 - Produce before magistrate within 24 hrs. [s69(2)]
- In non-cognizable / bailable [132(4)]
 - AC / DC will admit the person to bail
 - If bail is defaulted, the person will be produced before magistrate.

Comparative view of S.122(1) Vs. 132(1) (from the Act)

122(1)	Where a taxable person who--	132(1)	Whoever commits or causes to commit and retain the benefits arising out of any of the following offences, namely
(i)	supplies any goods or services or both without issue of any invoice or issues an <u>incorrect or false invoice</u> with regard to any such supply; [Supply without invoice]	(a)	supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, <u>with the intention to evade tax</u> ; [Supply without invoice]
(ii)	Issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder; [Invoice without supply]	(b)	issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder <u>leading to wrongful availment or utilisation of input tax credit or refund of tax</u> ; [Invoice without supply]
(iii)	collects <u>any amount as tax</u> but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; [Amt collected but not paid to govt]	(d)	collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; [Amt collected but not paid to govt]

(iv)	<p>collects <u>any tax</u> in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;</p> <p>[Tax collected]</p>		
(v)	<p>fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;</p> <p>[TDS]</p>		
(vi)	<p>fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52; [TCS]</p>		

122		132	
(vii)	takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder; [ITC]	(c)	avails input tax credit using such invoice or bill referred to in clause (b); [availing credit on invoice without supply]
(viii)	<u>fraudulently</u> obtains refund of tax under this Act; [Refund]	(e)	evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d); [other tax evasion and fraudulent refund]
(ix)	takes or distributes input tax credit in contravention of section 20, or the rules made thereunder; [ISD]		

122		132	
(x)	falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act; [Records]	(f)	falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act; [faking, falsifying or substituting records]
(xi)	is liable to be registered under this Act but fails to obtain registration; [Registration]		
(xii)	furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently; [Information]		

122		132	
(xiii)	<p>obstructs or prevents any officer in discharge of his duties under this Act;</p> <p>[Obstruction]</p>	(g)	<p>obstructs or prevents any officer in the discharge of his duties under this Act</p> <p>[obstructing officer]</p>
(xiv)	<p>transports any taxable goods without the cover of documents as may be specified in this behalf;</p> <p>[Eway Bill]</p>		
(xv)	<p>suppresses his turnover leading to evasion of tax under this Act;</p> <p>[Turnover]</p>		

122		132	
(xvi)	fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder; [books of accounts]		
(xvii)	fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act; [Information]	(k)	fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or [not giving or giving false information]
(xviii)	supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act; [Transport/Storage]	(h)	acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder; [concerning with confiscable goods]

122 (1)		132(1)	
(xix)	issues any invoice or document by using the registration number of another registered person; [GSTIN]		
(xx)	tampers with, or destroys any material evidence or document; [Tampering Evidence]	(j)	tampers with or destroys any material evidence or documents; [tampering evidence]
(xxi)	disposes off or tampers with any goods that have been detained, seized, or attached under this Act, [Tampering Evidence]		
		(i)	(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder; [concerning in illegal supplies]

122 (1)		132(1)	
		(l)	attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, [attempt, abatement]
<p>he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.</p>			<p>Shall be punishable –</p> <p>(i) In cases where the amount exceeds.....; with imprisonment....</p> <p>(ii) In cases where the amount exceeds.....; with imprisonment.....</p> <p>(iii).....</p> <p>(iv).....</p> <p>Note- penalty is for law breaking, and punishment is for wrongdoing. Fine is the amt paid as punishment.</p>

Compounding

[Section 138]

Compounding of Offences S.138

- Following offences **not eligible for compounding**:-
 - Offences numbered 1 to 7 of the 12 major offences [S.132(1)(a to g) i.e. inv, tax, credit, refund, A/c], **if compounded once**
 - **Aiding/abetting** offences numbered 1 to 7 of the 12 major offences, **if compounded once**
 - Any offence (**other than above**) already compounded once **under any SGST Act/IGST Act** if tax involved **> Rs.1 crore, if compounded once**
 - **Any offence which is also an offence under NDPSA or FEMA or any other Act other than CGST/SGST**
 - Convicted by Court for GST offences.
 - Accused of obstructing officer, tampering evidence, giving false information
 - **Any other** class of offences/persons that may be **prescribed**
- Any other offence may, **on payment** of TIP and **compounding amount** [Minimum - higher of 10k & 50% tax , Maximum-higher of 30k & 150% tax] be compounded
 - **before** or
 - **after** institution of prosecution
- Compounding **only after payment of tax, interest and penalty**
- Compounding **not to effect any proceeding already instituted**

THANK YOU



DRC-21- Order for acceptance / rejection of application for dererred payment / payment in instalments.

[illegible]

FORM GST DRC-20

[See rule 158(1)]

Application for Deferred Payment/Payment in Instalments

1. Name of the taxable person-
2. GSTIN -
3. Period _____

In accordance with the provisions of section 80 of the Act, I request you to allow me extension of time upto ----- for payment of tax/other dues **or to allow me to pay such tax/other dues in ----- instalments** for reasons stated below :

Demand ID				
Description	Central tax	State/UT tax	Integrated tax	CESS
Tax/Cess				
Interest				
Penalty				
Fees				
Others				
Total				

Reasons: -

Upload Docu

Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory _____
Name _____

Place -

Date -

XX

FORM GST DRC-21

[See rule 158(2)]

Reference No << --- >>

<< Date >>

To

GSTIN -----

Name -----

Address -----

Demand Order No.

Date :

Reference number of recovery :

Date :

Period -

Application Reference No. (ARN) -

Date -

Order for acceptance/rejection of application for deferred payment/payment in instalments

This has reference to your above referred application, filed under section 80 of the Act. **Your application for deferred payment/payment of tax/other dues in instalments has been examined and in this connection, you are allowed to pay tax and other dues by ----- (date) or in this connection you are allowed to pay the tax and other dues amounting to rupees ----- in ----- monthly instalments.**

OR

This has reference to your above referred application, filed under section 80 of the Act. Your application for deferred payment/payment of tax/other dues in instalments **has been examined and it has not been found possible to accede to your request for the following reasons :**

Reasons for rejection

Signature

Name

Designation

Place :

Date :

➤ **Filing Application for Compounding of Offence (FORM GST CPD-01) and Taking Actions in the Subsequent Proceedings** [S.138(1); Rule- 162; CPD-1, 2]

SECTION 138. Compounding of offences.—(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed :

Provided that nothing contained in this section shall apply to —

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed :

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law :

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.
- (3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

XX

RULE 162. Procedure for compounding of offences. — (1) An applicant may, **either before or after the institution of prosecution**, make an application under sub-section (1) of section 138 in **FORM GST CPD-01*** to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, may, by order in **FORM GST CPD-02**, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions of the Act shall apply as if no such immunity had been granted.]

XX

FORM GST CPD-01

[See rule 162(1)]

Application for Compounding of Offences

1.	GSTIN/Temporary ID	
2.	Name of the applicant	
3.	Address	
4.	The violation of provisions of the Act for which prosecution is instituted or contemplated	
5.	Details of adjudication order/notice	
	Reference Number	
	Date	
	Tax	
	Interest	
	Penalty	
	Fine, if any	
6.	Brief facts of the case and particulars of the offence (s) charged :	
7.	Whether this is the first offence under the Act	

8.	If answer to 7 is in the negative, the details of previous cases	
9.	Whether any proceedings for the same or any other offence are contemplated under any other law.	
10.	If answer to 9 is in the affirmative, the details thereof	

DECLARATION

- (1) I shall pay the compounding amount, as may be fixed by the Commissioner.
 (2) I understand that I cannot claim, as a matter of right, that the offence committed by me under the Act shall be compounded.

Signature of the applicant

Name

FORM GST CPD-02

[See rule 162(3)]

Reference No :

Date :

To

GSTIN/ID _____

Name _____

Address _____

ARN _____

Date _____

Order for rejection/allowance of compounding of offence

This has reference to your application referred to above. Your application has been examined in the department and the findings are as recorded below :

<<text>>

- ☐ I am satisfied that you fulfil the requirements to be allowed to compound the offences in respect of the offences stated in column (2) of the table below on payment compounding amount indicated in column (3) :

[Sr. No.]	Offence	Act	Compounding amount (Rs.)
(1)	(2)	(3)	(4)

Note :- (1) In case the offence committed by the taxable person falls in more than one category specified in Column (2), the compounding amount shall be the amount specified in column (3), which is the maximum of the amounts specified against the categories in which the offence sought to be compounded can be categorized.

(2) This amount will be deposited under minor head "Other".]

You are hereby directed to pay the aforesaid compounding amount by _____ (date) and on payment of the compounding amount, you will be granted immunity from prosecution for the offences listed in column (2) of the aforesaid table.

or

- ☐ Your application is hereby rejected.

Signature

Name

Designation]

- Filing reply to Provisional attachment order in DRC-22, Release order in DRC-23 (on payment, on objection, or attachment no longer required) [S.80, Rule 159, DRC-22, DRC-23]

SECTION 83. — Provisional attachment to protect revenue in certain cases. — (1) Where during the ~~pendency of any proceedings under section 62 [non-filer] or section 63 [URD] or section 64 [summary assessment] or section 67 [inspection, search, seizure] or section 73 or section 74 [Demand]~~, 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 in such manner as may be prescribed.~~

Substituted by Finance Act 2021 w.e.f. 1.1.2022 vide Notification no. 39/2021-CT dt 21.12.21 (as below)

SECTION 83. Provisional attachment to protect revenue in certain cases. — [(1) Where, after the initiation of any proceeding under Chapter XII [Assessment- S.59 to 64], Chapter XIV [Inspection, Search, Seizure, and Arrest- S.67 to 72] or Chapter XV [Demand & Recovery- S.73 to 84], 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.].

(2) 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).

XX

RULE 159. — Provisional attachment of property. — (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, ~~he shall pass an order in FORM GST DRC-22~~ to that effect mentioning therein, the details of property which is attached.

(2) 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 only on the written instructions from the Commissioner to that effect.

(3) Where the property attached is of ~~perishable or hazardous nature, and if the taxable person pays~~ an amount equivalent to the ~~market price~~ of such property ~~or 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 FORM GST DRC-23~~, on proof of payment.

(4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of ~~perishable or 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.~~

(5) Any person whose property is attached may, ~~within seven days of the attachment~~ under sub-rule (1), ~~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 in **FORM GST DRC-23***.

(6) ~~The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC-23*.~~

➤ **W.e.f. 1.1.22**

RULE 159. Provisional attachment of property. — (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in **FORM GST DRC-22*** to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment [in the **FORM GST DRC-22**] 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 only on the written instructions from the Commissioner to that effect [and a copy of such order shall also be sent to the person whose property is being attached under section 83].

(3) Where the property attached is of perishable or hazardous nature, and if the [person whose property has been attached] pays an amount equivalent to the market price of such property or the amount that is or may become payable [by such person] by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in **FORM GST DRC-23**, on proof of payment.

(4) Where such person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or 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 such person.

(5) Any person whose property is attached may, [file an objection in DRC-22A] within seven days of the attachment under sub-rule (1), 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 in **FORM GST DRC-23**.

(6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in **FORM GST DRC-23***.

XX

FORM GST DRC-22

[See rule 159(1)]

Reference No. :

Date :

To

Name

Address

(Bank/Post Office/Financial Institution/Immovable property registering authority)

Provisional attachment of property under section 83

It is to inform that M/s ----- (name) having principal place of business at ----- (address) bearing registration number as ----- (GSTIN/ID), PAN ----- is a registered taxable person under the <<SGST/CGST>> Act. **Proceedings have been launched against the aforesaid taxable person under section << --->> of the said Act to determine the tax or any other amount due from the said person.** As per information available with the department, it has come to my notice that the said person has a -

<<saving/current/FD/RD/depository>>account in your <<bank/post office/financial institution>> having account no. <<A/c no.>>;

or

property located at <<property ID & location>>.

In order to protect the interests of revenue and in exercise of the powers conferred under section 83 of the Act, I -
----- (name), ----- (designation), hereby provisionally attach the aforesaid account/property.

No debit shall be allowed to be made from the said account **or any other account** operated by the aforesaid person on the same PAN without the prior permission of this department.

or

The property mentioned above shall not be allowed to be disposed of without the prior permission of this department.

Signature

Name

Designation

Copy to -

[illegible]

➤ **Intimation of payment (FORM GST DRC-03)** [Rule 142(2,3), 73(5,8), 74(5,8), 129(1)]

- Pre-notice voluntary payment u/s 73(5), 74(5) or
- Post-notice voluntary payment u/s 73(8), 74(8) within 30 days, or
- Payment of amount [of S.129(1)] for release of detained / seized goods/conveyance/documents while in transit.
- Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others.

XX

➤ **Tabular summary of demand provisions**

	Non-fraudulant cases of S.73 [2 occasions of no penalty]	Fraudulant cases of S.74 [3 occasions of low penalty]
Before SCN (voluntary compliance)	Tax + Int + no penalty Exception- 10% tax as penalty payable if self assessed tax or amt collected as tax not paid within 30 days from the due date. [refer S.76]	Tax + Int + 15% tax as penalty
Before OIO (Within 30 days of notice) (to conclude proceedings)	Tax + Int + no penalty	Tax + Int + 25% tax as penalty
In OIO	Tax + Int + 10% penalty (or 10,000/-, higher)	Tax + Int + due penalty
After OIO (Within 30 day of communication)		Tax + Int + 50% of imposed penalty (to conclude proceedings)

XX

➤ **Forms DRC-01 to DRC-08**

DRC-01- Summary of Show cause notice [R.142(1)(a) r/w Ss 73(1), 74(1) & 76(2) i.e. for bonafide/malafide short payment.. & for tax collected but not remitted]

DRC-02-Summary of Statement [R.142(1)(b) r/w S.73(3)/74(3) for repeat SCN if grounds are the same. (as per 73(4): deemed SCN)]

DRC-03- Intimation of payment made voluntarily or made against the SCN or Statement.

DRC-04- Acknowledgement of acceptance of such voluntary payment.

DRC-05- Intimation of conclusion of proceedings.

DRC-06- Reply to the SCN

DRC-07-Summary of the order [i.e. Adjudication order OIO]

DRC-08- Rectification of order

XX

[RULE 142(1)-Notice and order for demand of amounts payable under the Act

➤ **Summary of SCN**

The proper officer shall **serve, along with** the

(a) **notice** issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, **a summary thereof** electronically in **FORM GST DRC-01**,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02***, specifying therein the details of the amount payable.

➤ **PNC: Pre-Notice Consultation**

[(1A) The [proper officer may], **before service of notice** to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, [communicate] the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.]

➤ **Intimation of voluntary payment made before SCN**

Rule 142(2):- Voluntary Payment:- Where, **before the service of notice** or statement, the person chargeable with tax **makes payment of the tax and interest** in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),] he **shall inform the proper officer of such payment in FORM GST DRC-03**

Section 73(5):- Pre-SCN voluntary payment:- (5) The person chargeable with tax may, **before service of notice** under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of **tax along with interest** payable thereon under section 50 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.

Section 74(5):- The person chargeable with tax may, **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 shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

[(2A) Where the person referred to in sub-rule (1A) 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 **Part B** of **FORM GST DRC-01A**.]

➤ **Intimation of voluntary payment made within 30 days after SCN**

Rule 142(3):- Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within ~~fourteen days of detention or seizure of the goods and conveyance~~, [wef 1.1.22] seven days of the notice issued under sub-section (3) of section 129 but before the issuance of order under the said sub-section (3)], he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.

Section 73(8):- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

Section 74(8):- (8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

XX

[FORM GST DRC-03

[See rule 142(2) & 142(3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

1.	GSTIN	
2.	Name	
3.	Cause of payment	
4.	Section under which voluntary payment is made	
5.	Details of show cause notice, if payment is made within 30 days of its issue	Date of issue
6.	Financial Year	
7.	Details of payment made including interest and penalty, if applicable	

(Amount in Rs.)											
Sr. No.	Tax Period	Act	Place of supply (POS)	Tax/ Cess	Interest	Penalty, if applicable	Others	Total	Ledger utilised (Cash/Credit)	Debit entry No.	Date of debit entry
1	2	3	4	5	6	7	8	9	10	11	12

8. **Reasons**, if any - <<Text box>>

9. Verification -

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory

Name

Designation/Status

Date -]

XX

FORM GST DRC-4

[See rule 142(2)]

Reference No. :

Date :

To

..... GSTIN/ID

..... Name

..... Address

Tax Period

F.Y.

ARN -

Date -

Acknowledgement of acceptance of payment made voluntarily

The payment made by you vide application referred to above is hereby acknowledged to the extent of the amount paid and for the reasons stated therein.

Signature

Name

Designation

Copy to -

XX

FORM GST DRC-5

[See rule 142(3)]

Reference No. :

Date :

To

..... GSTIN/ID
..... Name
..... Address

Tax Period

F.Y.

SCN

Date

ARN

Date

Intimation of conclusion of proceedings

This has reference to the show cause notice referred to above. As you have paid the amount of tax and other dues mentioned in the notice along with applicable interest and penalty in accordance with the provisions of Section , the proceedings initiated vide the said notice are hereby concluded.

Signature

Name

Designation.....

Copy to -

- Prosecution and Compounding [S.132, 134, 135, 136, 138; Rule-162; CPD-01, 02; CrPC]
- S.132- Prosecution Penalty- (for above 1 cr specified offences)
 - Graded imprisonment from 1 to 5 yr with fine.
 - For committing or abetting in fabrication, obstructing, tampering– upto 6 months and/or fine
 - For repeat conviction – upto 5 yrs with fine [for main offences & repeat conviction- minimum 6 months unless special reasons]
- S. 133- Officer divulging information willfully (other than his duty or in prosecution proceeding)-- upto 6 months and/or upto 25000/-

Sanction of Govt for prosecuting officer, and sanction of Commissioner for prosecuting others needed.

- S.134- Cognizance by Court:

On Commissioner's prior sanction

Trial by First Class Magistrate.

- **cognizable offences**- Above 5cr cases of - supply w/o inv, inv w/o supply, taking credit on such inv [or fraudulent ITC on no-invoices- wef 1.1.21], not remitting the collected tax- these four are cognizable & non-bailable. Others are bailable.
- S.135- Rebuttable presumption of '**culpable mental state**' (i.e. intention, motive, knowledge of a fact). Fact to be proved beyond doubt and not merely on preponderance of probability.
- S. 136- Admissibility of S.70 Statement recorded on issuing summons:

Only when statement maker is examined as a witness, and the court considers so.

Or when he is dead, incapable, kept out of way, likely to cause delay or expenses which the court considers unreasonable.

- S.137- Offences by Company- every person incharge and responsible for conduct of business is liable.
- S.138- Compounding Amount : [Minimum - higher of 10k & 50% tax , Maximum- higher of 30k & 150% tax]

XX

SECTION 132. Punishment for certain offences. — (1) [Whoever **commits**, or **causes to commit** and **retain the benefits** arising out of, any of the following offences], namely :—

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

[(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;]

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, [* * *] or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable —

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one

hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

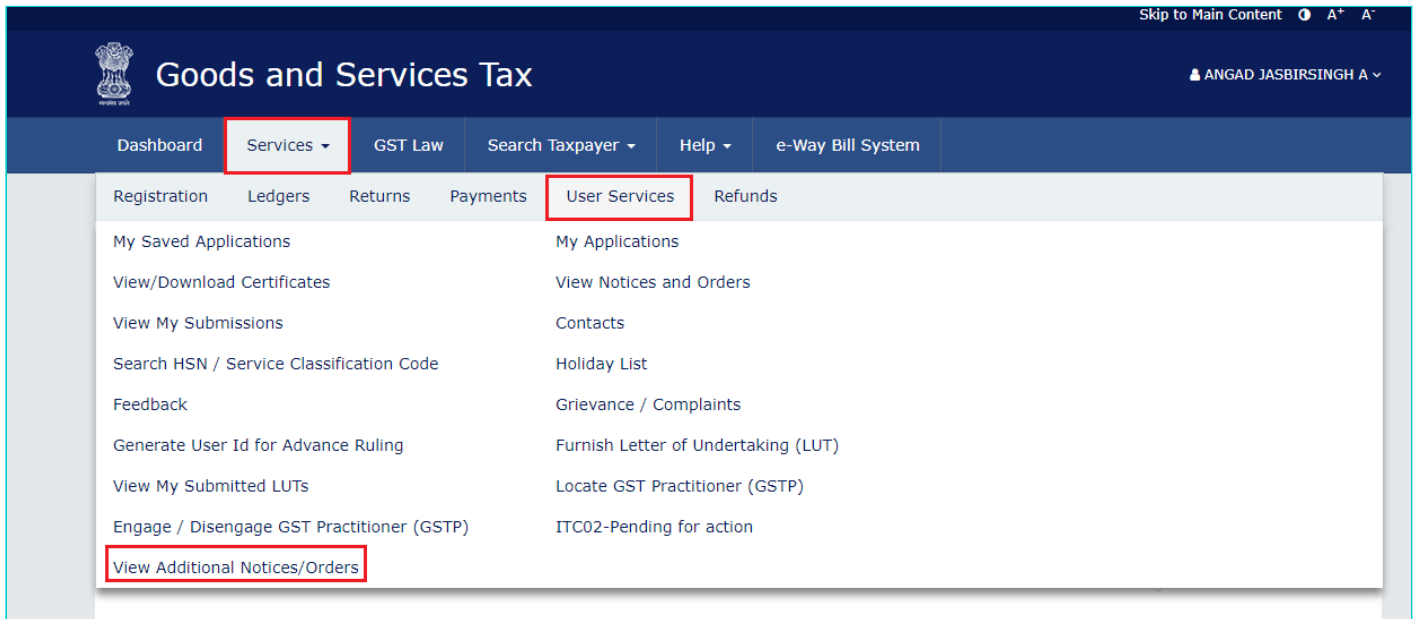
Explanation. — For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Manual > Viewing Prosecution Notice Issued by Tax Officials

How can I view Prosecution Notice issued by Tax Officials against my case?

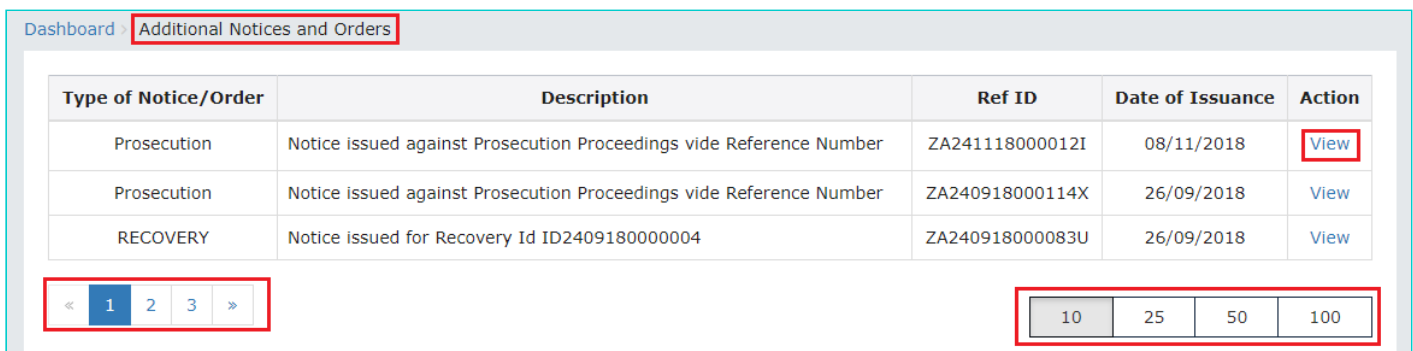
To view Prosecution Notice issued by Tax Officials against your case, perform the following steps:

1. Access the www.gst.gov.in URL. The GST Home page is displayed.
2. Login to the portal with valid credentials.
3. Dashboard page is displayed. Click **Dashboard > Services > User Services > View Additional Notices/Orders**



4. **Additional Notices and Orders** page is displayed. Click the **View** hyperlink to go to the Case Details screen of the issued Notice/Order.

Note: All orders/notices are displayed in descending order. You can search for the orders/notices you want to view using the Navigation buttons provided below.



5. **Case Details** page is displayed. The **NOTICES** tab is selected by default, where the table containing details of the Prosecution Notice is displayed. Click the document name(s) in the **Documents** section of the table to download into your machine and view them.

[Dashboard](#) > [Services](#) > [User Services](#) > [My Applications](#) > **Case Details**

ARN
AD240918000016E

GSTIN/UIN/Temporary ID
24ABCPM8147P1Z6

Date Of Application/Case Creation
27/09/2018

Status
Complaint filed

NOTICES

Reference/Notice No.	Date of Notice	Description of Notice	Issued by	Documents
ZA241118000012I	08/11/2018	test	MUKESH DHANJIBHAI KARSHALA , Commercial Tax Officer	Prosecution Notice

Note: Once the Tax Official has issued Notice against your case, Status will be "Complaint filed". It will get changed to "Closed" when the Tax Official closes the case in any of the following cases:

- If you file the application for compounding of offence and the same is allowed by the Commissioner and the compounding amount (tax, interest and penalty involved) is also paid by you within the time specified in the Order, then the private complaint filed with the First Class Judicial Magistrate or Competent Court will be withdrawn/stand abated. (for details refer Section 138)
- If you file the application for compounding of offence and the same is allowed by the Commissioner and the compounding amount is paid by you within the time specified in the Order, but the private complaint is not yet filed with the First Class Judicial Magistrate or Competent Court, then no further action shall be taken for prosecution in respect of same offence.
- If the private complaint filed with the First Class Judicial Magistrate or Competent Court is set aside, then the case stands closed.
- If you have complied with the order of the First Class Judicial Magistrate or Competent Court, then the case stands closed.

[Go back to the Main Menu](#)