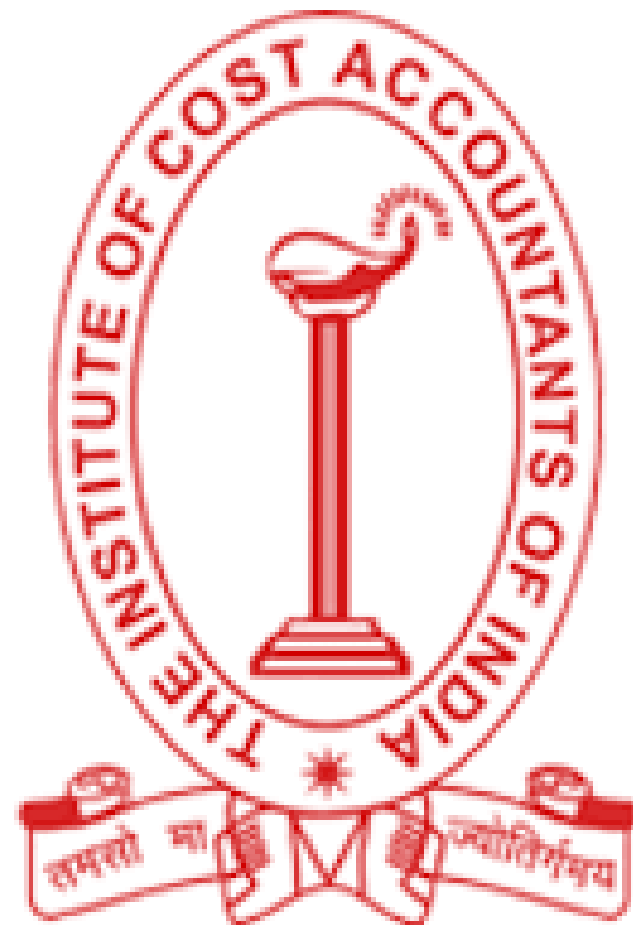


Demands and Recovery under GST



CMA Yogesh Chatwani,

Practicing Cost Accountant, IP and RV
(SFA),

Ahmedabad – Gujarat.

Email: ybchatwani2310@gmail.com

Statutory provisions related to **Demands** under GST

– Chapter XV of CGST Act

Section 73: Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason **other than fraud or any wilful-misstatement or suppression of facts;**

Section 74: Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized **by reason of fraud or any wilful-misstatement or suppression of facts;**

Section 75: General Provisions relating to **determination of tax;**

Section 76: Tax Collected **but not paid to Government;**

Section 77: Tax wrongfully collected and paid to Central Government or State Government;

Statutory provisions related to **Recovery** under GST

– Chapter XV of CGST Act

Section 78: Initiation of **recovery proceedings**;

Section 79: **Recovery of tax**;

Section 80: Payment of tax and other amount **in instalments**;

Section 81: Transfer of property **to be void** in certain cases;

Section 82: Tax to be **first charge on property**;

Section 83: **Provisional attachment** to protect revenue in certain cases;

Section 84: **Continuation and validation** of certain recovery proceedings;

Statutory provisions related to Demands and Recovery under GST – Chapter XVIII of CGST Rules

Rule No.	Rule Heading
142	Notice and order for demand of amounts payable under the Act.
142A	Procedure for recovery of dues under existing laws.
143	Recovery by deduction from any money owed.
144	Recovery by sale of goods under the control of proper officer.
144A	Recovery from a third person.
145	Recovery of penalty by sale of goods or conveyance detained or seized in transit.
146	Recovery through execution of a decree, etc.
147	Recovery by sale of movable or immovable property.
148	Prohibition against bidding or purchase by officer.
149	Prohibition against sale on holidays.

Statutory provisions related to Demands and Recovery under GST – Chapter XVIII of CGST Rules

Rule No.	Rule Heading
150	Assistance by police.
151	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 or conveyance and movable or immovable property.
155	Recovery through land revenue authority.
156	Recovery through court.
157	Recovery from surety.
158	Payment of tax and other amounts in instalments.
159	Provisional attachment of property.

Statutory provisions related to Demands and Recovery under GST – Chapter XVIII of CGST Rules

Rule No.	Rule Heading
160	Recovery from company in liquidation.
161	Continuation of certain recovery proceedings.
162	Procedure for compounding of offences.

Forms related to Demands and Recovery under GST

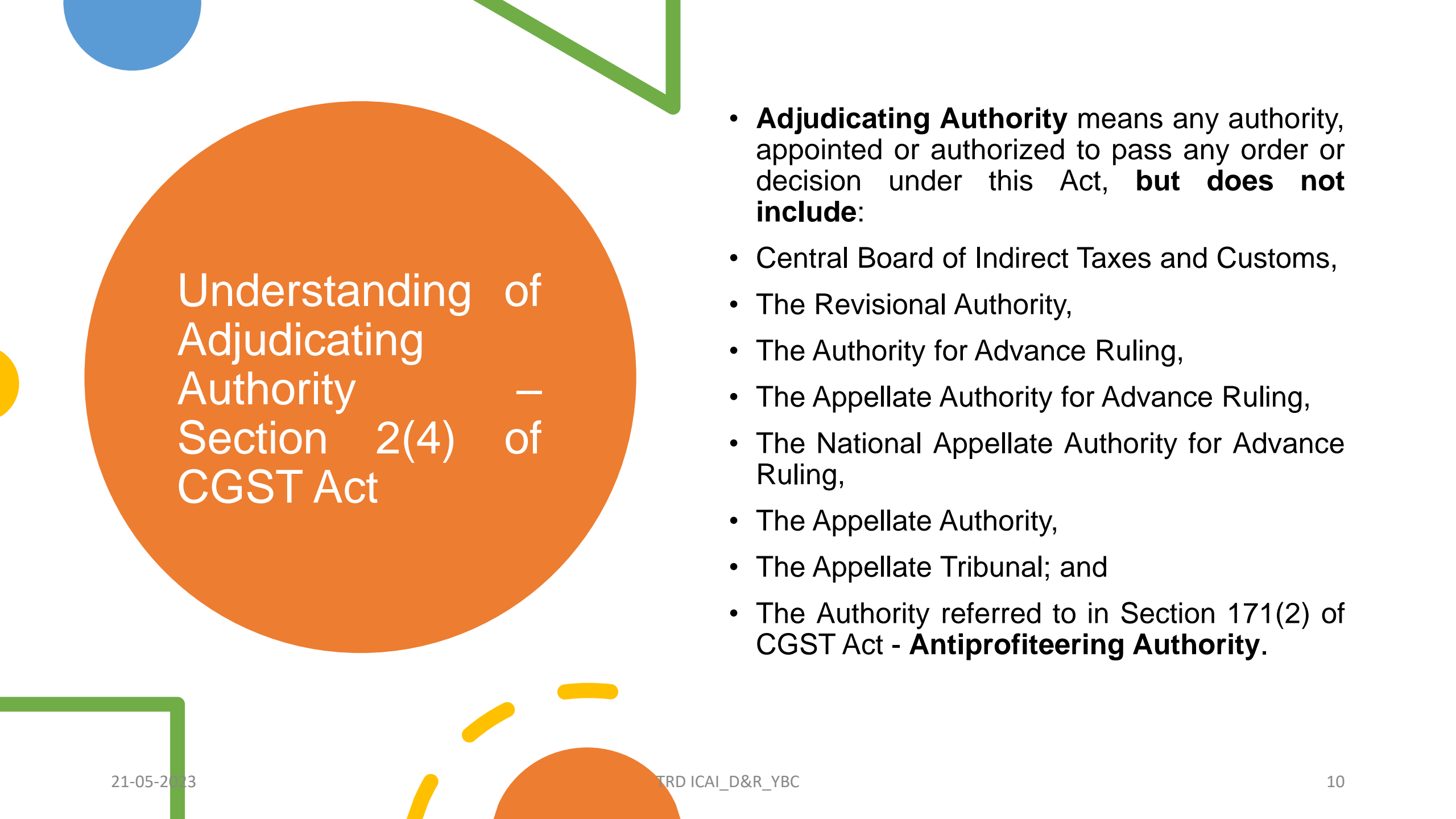
Form	Rule	Description
GST DRC 01	142(1)(a)	Summary of SCN;
GST DRC 01A	142 (1A)	Intimation of tax ascertained as being payable
GST DRC 02	142(1)(b)	Summary of Statement;
GST DRC 03	142 (2) & 142(3)	Intimation of payment made voluntarily or made against SCN or against statement;
GST DRC 04	142 (2)	Acknowledgement of acceptance of payment made voluntarily;
GST DRC 05	142(3)	Intimation of conclusion of proceedings;
GST DRC 06	142(4)	Reply to the SCN;
GST DRC 07	142(5)	Summary of the Order;
GST DRC 07A	142A(1)	Summary of the Order creating demand under existing laws
GST DRC 08	142(7)	Summary of Rectification / Withdrawal Order;
GST DRC 08A	142A(2)	Amendment/Modification of summary of the order creating demand under existing laws
GST DRC 09	143	Order for recovery through specified officer;
GST DRC 10	144	Notice of Auction;
GST DRC 11	144 & 147	Notice to successful bidder;

Forms related to Demands and Recovery under GST

Form	Rule	Description
GST DRC 12	144	Sale Certificate;
GST DRC 13	145	Notice to a third person;
GST DRC 14	145 (2)	Certificate of Payment to a third person;
GST DRC 15	146	Application before a Civil Court requesting execution for a Decree.
GST DRC 16	147(1) & 151(1)	Notice for attachment and sale of immovable / movable goods / shares under Section 78.
GST DRC 17	147(4)	Notice for Auction of Immovable / Movable Property under Section 79(1)(d).
GST DRC 18	155	Certificate of Action U/S 79(1)(c);
GST DRC 19	156	Application to the Magistrate for Recovery of Fine;
GST DRC 20	158(1)	Application for Deferred Payment / Payment in Instalment;
GST DRC 21	158(2)	Order for acceptance / rejection of Application for deferred payment / payment in instalments;

Forms related to Demands and Recovery under GST

Form	Rule	Description
GST DRC 22	159(1)	Provisional attachment of Property U/S 83;
GST DRC 22A	159(5)	Application for filing objection against provisional attachment of property;
GST DRC 23	159	Restoration of provisionally attached property / bank a/c U/S 83;
GST DRC 24	160	Intimation to Liquidator for recovery of amount
GST DRC 25	161	Continuation of Recovery Proceedings;



Understanding of Adjudicating Authority — Section 2(4) of CGST Act

- **Adjudicating Authority** means any authority, appointed or authorized to pass any order or decision under this Act, **but does not include:**
- Central Board of Indirect Taxes and Customs,
- The Revisional Authority,
- The Authority for Advance Ruling,
- The Appellate Authority for Advance Ruling,
- The National Appellate Authority for Advance Ruling,
- The Appellate Authority,
- The Appellate Tribunal; and
- The Authority referred to in Section 171(2) of CGST Act - **Antiprofitteering Authority.**

[illegible]

- Adjudicating Authority (AA) is empowered to **issue Show Cause Notice (SCN)** to the **Taxable Persons** under various provisions of **GST laws** including under **Chapter XV – Demand and Recovery** - of CGST Act 2017.
- Show Cause Notices are issued to adhere to the **principles of Natural Justice**, before **fastening the demand**.
- The Show Cause Notice seeks **reply or explanation** from the Taxable Person to “**show cause**” to the Department as to why **tax dues**, as demanded under SCN, shall not be recovered from it.
- AA considers the replies furnished by the Taxable Person in response to such Show Cause Notice and **then pass the appropriate Order (known as Order-in-Original)**.

Appropriate Adjudicating Authority – Circular 31/05/2018 dated 09/02/2018

Officer to issue SCN	Issuance of SCN and OIA under Sec 73 & Sec 74 of CGST Act for CGST dues	Issuance of SCN and OIA under Sec 73 & Sec 74 of CGST Act for IGST dues as per U/S 20 of IGST Act	Issuance of SCN and OIA under Sec 73 & Sec 74 of CGST Act for CGST dues and IGST dues as per U/S 20 of IGST Act
Superintendent of Central Tax	Up to Rs. 10 lakhs.	Up to Rs. 20 lakhs.	Upto Rs. 20 lakhs.
Deputy / Assistant Commissioner of Central Tax	> Rs. 10 lakhs and upto Rs. 1 Crore	> Rs. 20 lakhs and up to Rs. 2 Crore	> Rs. 20 lakhs and up to Rs. 2 Crore
Additional / Joint Commissioner of Central Tax	> Rs. 1 Crore	> Rs. 2 Crore	> Rs. 2 Crore

Revisional Authority and Appellate Authority – based on Adjudicating Authority

If Adjudicating Authority is:	Revisional Authority	Appellate Authority
Superintendent of Central Tax, Deputy / Assistant Commissioner of Central Tax	Additional or Joint Commissioner of Central Tax.	Additional or Joint Commissioner of Central Tax (Appeals).
Additional or Joint Commissioner of Central Tax.	The Principal Commissioner or Commissioner of Central Tax	Commissioner of Central Tax (Appeals)

Structure of SCN

Master Circular on Show Cause Notice, Adjudication and Recovery: 1053/2/2017-CX. dated 10-Mar-2017 issued by CBEC:

Introduction of the case;

Legal framework;

Factual statement and appreciation of evidences;

Discussion, facts and legal frame work;

Discussion on Limitation;

Calculation of duty and other amounts due;

Statement of charges;

Authority to adjudicate.

Preparation defence reply against SCN – Allegation / Charges in the SCN;

Nature of allegations;

Basis of allegations;

Evidence;

Interpretation of the statutory provisions;

Judgements;

AAR/AAAR Ruling;

Technical Report;

Third Party statements;

Discrepancies in Records;

CBIC's Circular;

Recurring demand;

Revenue's pending appeal

Preparation defence reply against SCN – Computation of Demand

Classification;

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graph TD; A[Classification] --> B[Valuation]; B --> C[Exemption Notification, if any]; C --> D[Rate of tax]; D --> E[Cum-tax principle, in case it is applicable];
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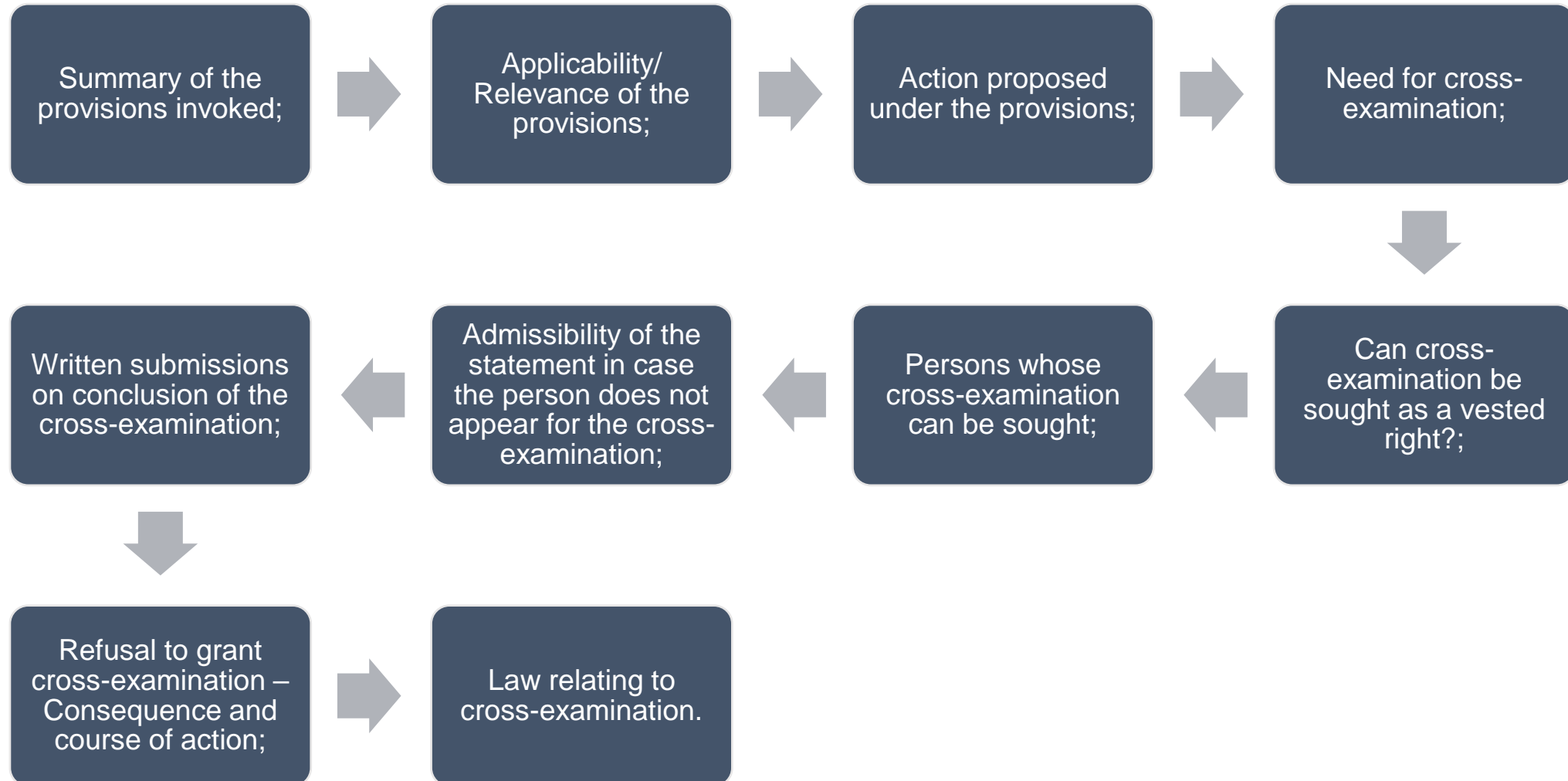
Valuation;

Exemption Notification, if any;

Rate of tax;

Cum-tax principle, in case it is applicable;

Preparation defence reply against SCN – Statutory provisions invoked in SCN and Cross Examination



Preparation defence reply against SCN – Drafting Reply to SCN;

**Background or
Statement of facts:**

Brief background of
the Assessee;

Narration of the
relevant facts;

Chronology of the
events /f acts;

Relevant facts
leading to the issue
of SCN;

Exhibits;

Amount of tax, etc.
demanded and other
action proposed –
statutory provisions
invoked;

Gist of the
allegations;

Preparation defence reply against SCN – Grounds of Defence

Merits of the case;

Limitation;

Computation;

Challenge to the
penal action and
other action
proposed;

Importance of the
Reply to the SCN;

Furnishing of
evidence in
support of each
contention;

Judgements'
compilation –
Relevant para

Section 73(1) of CGST Act

- **Any tax**
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax,
- PROPER OFFICER shall serve Notice on the person
- requiring him to show cause as to why
- he should not pay the amount specified in the Notice
- along with interest payable thereon under Section 50
- and a penalty leviable as per the provisions of the CGST Act

Overview of Section 73 of CGST Act

Section 73 deals with the cases where there is no invocation of fraud / suppression of facts / mis-statement etc.



The Section stipulates that where it appears to the Proper Officer that due to any reason **other than fraud / mis-statement / suppression of facts to evade tax**, tax has not been:



(a) paid or short paid or erroneously refunded; OR



(b) where input tax credit has been wrongly availed or utilized for,



the Proper Officer shall issue a Show Cause Notice(SCN) as to why the amount of tax should not be paid along with interest and penalty leviable thereon under the provisions CGST Act and Rules made thereunder.




The SCN need to be adjudicated within a **period of three years** from the due date **of filing of Annual Return**.




The SCN is required to be issued **at least three months prior to the time limit set for adjudication**.

Overview of Section 73 of CGST Act


If the person pays the tax along with interest **within 30 days of issue of SCN**, no penalty shall be payable and all proceedings in respect of such notice shall be **deemed to be concluded**.



If a person pays the amount of demand along-with interest **before issue of notice**, as **ascertained either on his own or ascertained by the Proper Officer**, and on such payment, informs the Proper Officer in writing regarding the same, **no notice shall be issued** with respect to the amount of tax so paid.

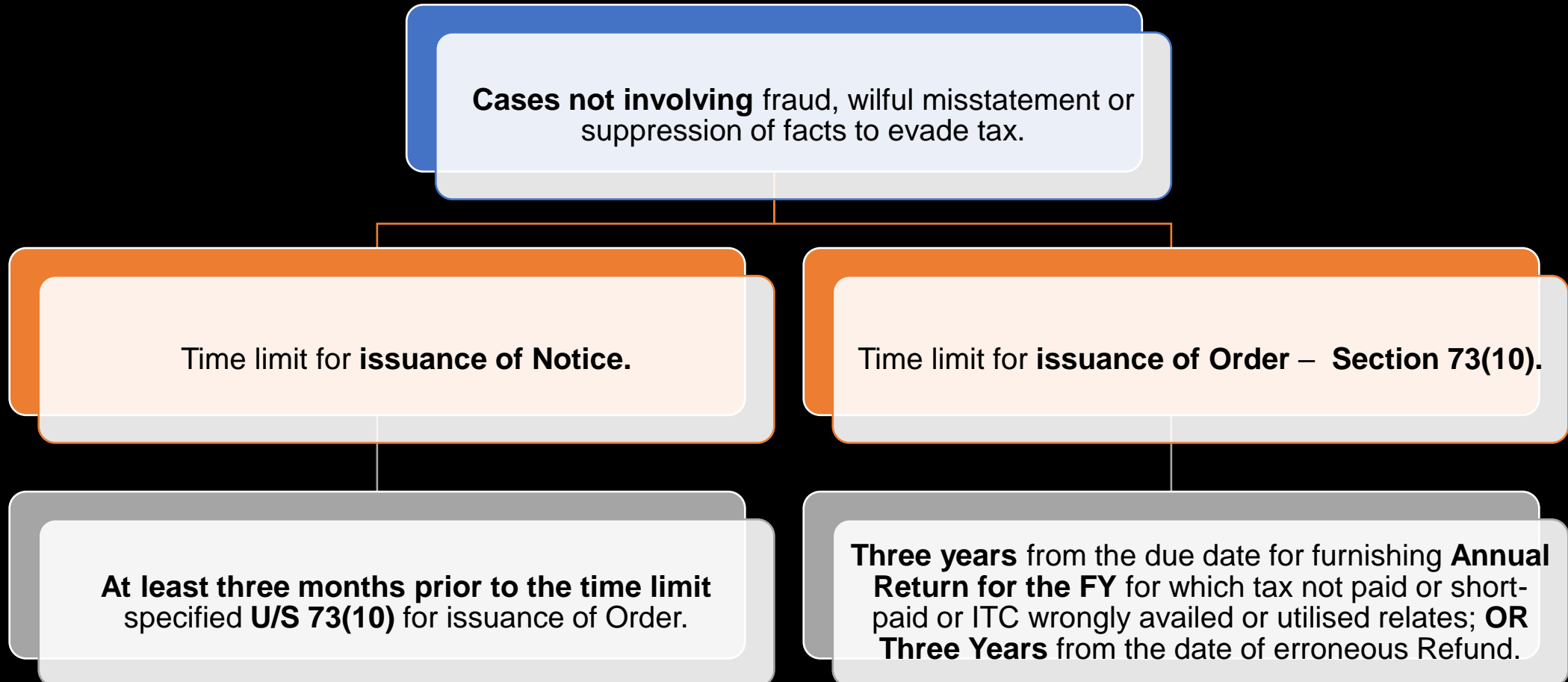


The Proper Officer, after considering the representations made by the person to whom SCN was issued, **shall issue an Order**, determining the **amount of tax, interest and penalty leviable on such person**.



Further the amount of penalty leviable in such order shall be equivalent to **10% of such tax or Rs. 10,000 whichever is higher**.

Time limit for issuance of Notice and Order U/S 73 of the CGST Act 2017



Revised time limit for issuance of Notice and passing of Order U/S 73 of CGST Act – Notification No.09/2023-CT dated 31/03/2023

Year	Due Date for filing of Annual Return	Revised time limit for issuance of Notice	Revised time limit for passing of Order
2017-2018	07-02-2020	30-09-2023	31-12-2023
2018-2019	31-12-2020	31-12-2023	31-03-2024
2019-2020	31-03-2021	31-03-2023	30-06-2024



Section 168A of CGST Act (Notification dated 31/03/2023 issued under this statutory provision)

168A. Power of Government to extend time limit in special circumstances:

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied **with due to force majeure**.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation . - For the purposes of this section, the expression "**force majeure**" means a case of war, **epidemic**, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

Ingredients of Section 73 of the CGST Act

Section 73 provides for: Service of notice by proper officer; and

Notice shall be served on the person who is chargeable with tax, who has:

- Not paid or short paid the tax;
- Wrongly availed or utilized Input Tax Credit;
- Received erroneous Refund Claim;

Such amounts shall be required to be determined along with the applicable interest as per Section 50 of CGST Act and penalty leviable under the provisions of CGST Act or the Rules made thereunder.

The Notice need to be issued **at least three months** prior to the **expiry of the time limit of three years for issuance of order.**

The proper office shall along with notice provide a **Summary in Form GST DRC-01** specifying therein the details of the amount payable.

Section 74(1) of CGST Act

- **Any tax**
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- for reason of fraud or any willful-misstatement or suppression of facts to evade tax,
- PROPER OFFICER shall serve Notice on the person
- requiring him to show cause as to why
- he should not pay the amount specified in the Notice
- along with interest payable thereon under Section 50
- and a penalty leviable as per the provisions of the CGST Act.

Overview of Section 74 of CGST Act

Section 74 deals with cases where the provisions related to fraud /suppression / mis-statement etc. are invoked.

The Section stipulates that where it appears to the Proper Officer that by reason of fraud / mis-statement / suppression of facts to evade tax, tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for, the Proper Officer shall issue a Show Cause Notice (SCN) as to why the amount of tax should not be recovered along with interest and penalty leviable thereon under the provisions of CGST Act and Rules made thereunder.

The SCN need to be adjudicated within a period of five years from the due date of filing of Annual Return.

The SCN needs to be issued at least six months prior to the time limit set for adjudication.

Overview of Section 74 of CGST Act

A person chargeable with tax in cases of fraud / suppression of facts / willful misstatement, pays the amount of demand along-with interest before issue of Notice, then he shall have an option to pay the amount of tax along with interest and penalty equal to **15 percent of the tax** involved, as ascertained either on his own or ascertained by the Proper Officer, and on such payment, **no Notice shall be issued with respect to the tax so paid.**

If notice is issued under Section 74 and thereafter the taxable person makes payment of tax along with interest and with penalty **equal to 25% of such tax within 30 days of issue of Notice**, all proceedings in respect of such notice shall be **deemed to be concluded.**

In case a notice is adjudicated under Section 74 and order is issued confirming tax demand and penalty, and if the person pays the tax determined by the order along with interest and a penalty equivalent to **50% of such tax within thirty days of the communication of order**, all proceedings in respect of the said tax shall be deemed to be concluded.

Time limit for issuance of Notice and Order U/S 74 of the CGST Act 2017

Cases involving fraud, wilful misstatement or suppression of facts to evade tax.

Time limit for **issuance of Notice**.

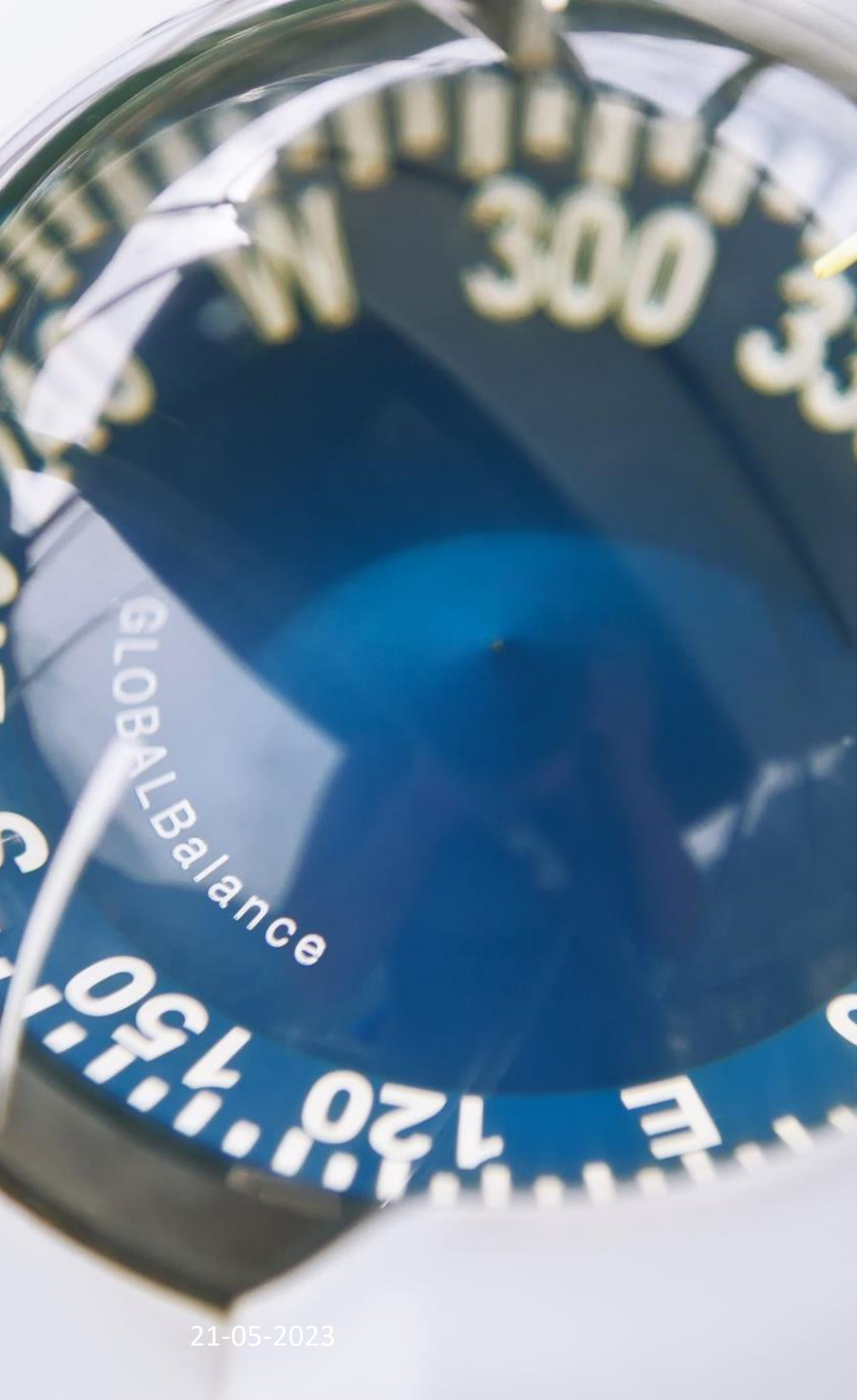
At least six months prior to the time limit specified U/S 74(10) for issuance of Order.

Time limit for **issuance of Order – Section 74(10)**.

Five years from the due date for furnishing **Annual Return for the FY** for which tax not paid or short-paid or ITC wrongly availed or utilised relates; **OR**
Five Years from the date of erroneous Refund.

Indicative Period for issuance of Notice and passing of Order U/S 74 of CGST Act (can be revised)

Year	Due Date for filing of Annual Return	SCN Can be issued up to four years and six months from due date of AR	Order to be passed within five years from the due date of AR
2017-2018	07-02-2020	05-08-2024	06-02-2025
2018-2019	31-12-2020	29-06-2025	30-12-2025
2019-2020	31-03-2021	29-09-2025	30-03-2026



Brief overview of Circular No. 185/17 / 2022-GST dated 27/12/2022

Show cause notice under Section 73 of the CGST Act must be issued within 2 years and 9 months from the due date of furnishing the annual return or from the date of erroneous refund, except in cases involving fraud, wilful misstatement, or suppression of facts to evade tax payment.

If the show cause notice under Section 74 of the CGST Act is issued within 2 years and 9 months from the due date of furnishing the annual return or from the date of erroneous refund, the entire amount mentioned in the notice will be covered under the predetermined amount.

If the show cause notice under Section 74 is issued for multiple financial years, the amount payable in terms of Section 73 will be re-determined only for the financial year for which the notice was issued within the specified time limit, as per Section 73(2) of the Act.

Penalty payable U/S 73 and U/S 74 of CGST Act

Timeline for Compliance	Section 73	Section 74
Before issuance of SCN	No Penalty U/S 73(5);	15% of Tax Amount U/S 74(5);
Within 30 days of issuance of SCN;	No Penalty U/S 73(8);	25% of Tax Amount U/S 74(8);
Determination of Penalty after considering the representations made during the proceedings;	10% of Tax Amount or Rs. 10000-00, whichever is higher U/S 73(9);	50% of Tax Amount where payment of tax dues is made within 30 days of issuance of Order or 100% Tax Amount after 30 days

Other Statutory Provisions related to Section 74 of CGST Act

Section / Rule	Heading
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 75	General provisions relating to determination of tax.
Section 50	Interest on delayed payment of tax.
Section 122	Penalty for certain offences.
Section 125	General penalty.
Section 129	Detention, seizure and release of goods and conveyances in transit.
Section 130	Confiscation of goods or conveyances and levy of penalty.
Section 132	Punishment for certain offences.
Rule 142	Notice and order for demand of amounts payable under the Act.

Ingredients of Section 74 of the CGST Act

The section covers certain situations for demand of taxes in cases of fraud, or any kind of willful mis-statement or suppression of facts with an intent to evade payment of tax.

Whenever the tax is

not paid or

short paid or

credit wrongly availed or utilized or

erroneously refunded

with an intent to evade tax by way of

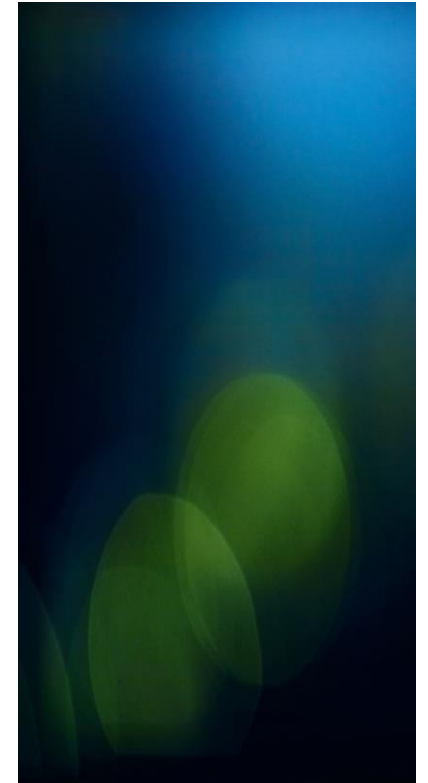
Fraud;

Wilful misstatement;

Suppression of facts;

the Proper Officer shall issue a notice for such amount along with interest as per Section 50 and penalty equivalent to the amount of tax specified in notice.

The Proper Officer shall along with the Notice provide a summary in Form GST DRC-01 specifying therein the details of the amount payable.



Meaning of Fraud

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Fraud is defined to be an intentional act by an individual or a group of them, who are charged with governance (who are in authority), or third parties, **involving the use of deception to obtain an unjust or illegal advantage.**

A fraud could take the form of **misstatement of information (financial or otherwise) or misappropriation of the assets of the entity.**

A fraudster would always find **an illegal way to take undue advantage** of provisions of the tax law and thereby enrich himself by such unlawful means.

GST is no escape for such fraudsters.

Major Areas Where GST Fraud Cases in India Evolved

Input tax credit and Invoices

Refunds

Meaning of Suppression of Facts and Wilful Misstatement

The term “suppression” is specifically explained to mean:

non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder; **OR**

failure to furnish any information on being asked for, in writing, by the Proper. Officer.

“**Willful misstatement**” generally covers a case of deceit but generally with the connivance of another.

Meaning of Prosecution

Prosecution is the formal initiation of a criminal proceeding by the government, wherein they present the charges against an individual accused of committing a crime.

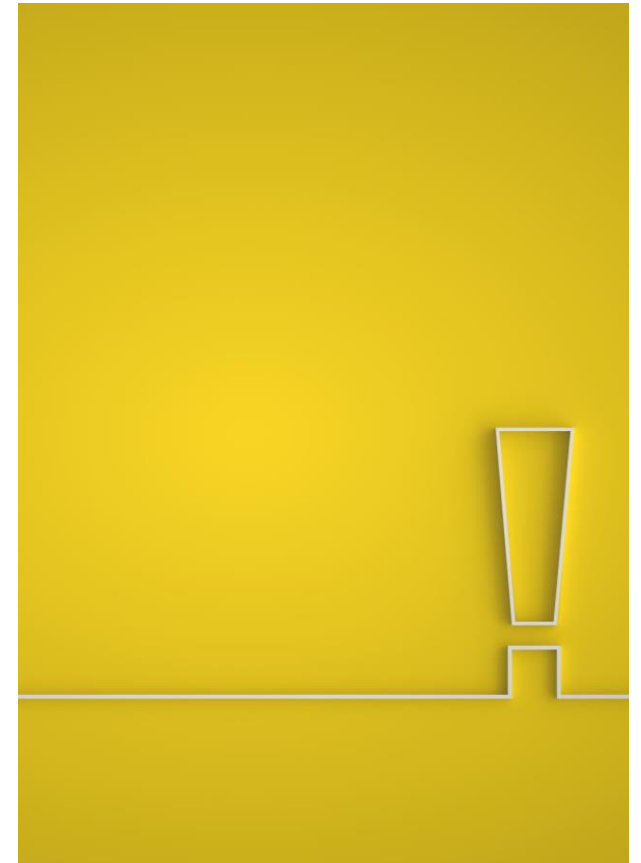
The purpose of prosecution is to impose a suitable punishment and penalty on the accused.

It serves as the starting point for a legal process in which the government aims to ensure that companies and individuals involved in tax evasion are held accountable.

It is important to note that ongoing assessment, reassessment, or appeals related to taxes do not prevent the commencement of prosecution.

There is no legal provision that prohibits the launch of prosecution for the offenses in question until the assessment or reassessment proceedings against the individual being assessed are completed.

However, it is necessary to establish the presence of mens rea, which refers to the intent or knowledge of wrongdoing, as a prerequisite for initiating prosecution proceedings.



Ingredients of Section 75 of the CGST Act

The provisions U/S 75 of CGST Act are general provisions for determination of tax and are applicable irrespective of whether the Notice invokes the extended period or not.

If an Order of Court or Appellate Tribunal stays the service of Notice or issuance of Order then, the period of such stay will get excluded from the period of issuance of Order, that 3 years or 5 years, whichever is applicable.

When a Notice has been issued considering the case to be for fraud or for willful misrepresentation or for suppression of facts, and whereas the charges of fraud, willful misstatement and suppression of facts were not sustainable or not established by an Order of Appellate Authority or Appellate Tribunal, then in such case the officer shall determine the tax as if the notice is issued for the normal period of 3 years.

An order required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, shall be issued within **two years from the date of communication of the said direction.**

Ingredients of Section 75 of the CGST Act

Opportunity of personal hearing has to be granted when requested for in writing by the person chargeable with tax or where any adverse decision is proposed to be taken against the person.

Personal hearing can be adjourned for reasons to be recorded in writing, when sufficient cause is shown by the person chargeable with tax. However, such adjournment can be granted for a maximum of 3 times.

A Departmental SCN which specifies three consecutive dates for personal hearing (failing which an ex-parte order is passed) will not be held to be valid as this is against the principles of natural justice.

The relevant facts and basis of the decision shall be set out in the order, which means a speaking order needs to be placed.

The 'grounds' on which allegations were made cannot be deviated from and the 'Order' must support the demand on the same grounds and not rely on new grounds or cure deficiencies in grounds in SCN.

Failure of adjudication on this aspect alone may be sufficient to get favorable Order in appellate proceedings.

Drafting of SCN has attained more importance.

This provision when read together with section 160(2), provides an important clue as to the 'preliminary objections' that need to be raised while replying to SCN.

Ingredients of Section 75 of the CGST Act

The amount of tax along with interest and penalty should not exceed the amount mentioned in the notice and the grounds shall not go beyond what is mentioned in the notice.

When the decision of Tribunal / Court / Appellate Authority modifies the amount of tax, correspondingly interest and penalty shall also be modified to that extent by the Proper Officer.

Interest shall be payable in all cases whether specifically mentioned or not.

This provision indicates that were 'penalty' is OMITTED from the SCN, even if applicable, the adjudicating authority cannot confirm demand for penalty by furnishing the obvious deficiency in SCN.

This is evident in the fact that Legislature has thoughtfully only save omission of 'interest' from SCN and not 'interest and penalty'.

When the penalty is imposed under Section 73 & 74, no penalties shall be imposed under any other provisions of this Act for the same act or omission.

Recovery of Tax Collected but not paid – Section 76 of CGST Act 2017

Amount(s) collected representing tax to be paid to Govt. –even if underlying supplies are not taxable;

SCN to be issued -no time limit specified for SCN –**Interest** provisions are applicable;

Personal hearing to be granted upon specific written request;

Time limit for issue of Order: **1 year from date of issue of SCN;**

If proceedings stayed by higher court, time spent before higher fora to be excluded from time limit of 1 year;

Amount paid to Govt. shall be adjusted against the tax payable on the said transaction;

Any excess will be credited to Fund or refunded to person who has borne tax incidence;


Tax wrongfully collected and paid to CG or SG – Section 77

Type of Tax	Erroneously classified and paid	Remedy	Consequences
IGST;	CGST & SGST or UGST;	File Refund for CGST & SGST or UGST;	To pay IGST without payment of interest;
CGST & SGST or UGST	IGST	File Refund for IGST	To pay CGST and SGST or UGST without payment of interest;

Tax wrongfully collected and paid to Central Government or State Government – Section 77

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

*(2) A registered person who has paid integrated tax on a transaction considered by him to be an **inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.***



Initiation of Recovery Proceedings – Section 78

*Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person **within a period of three months from the date of service of such order** failing which **recovery proceedings shall be initiated**:*

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



Recovery of Tax by Proper Officer – Section 79 of CGST Act 2017

Deduct / recover	Deduct / recover the amount payable out of money owed to Person or detain and sell goods belonging to the person;
Recover	Recover from another person who owes money to the liable person. Notice to be issued. This notice can be amended or revoked or extended for time at any time by the officer.
Seize	Seize any movable or immovable property belonging to or under the control of such person and detain the same until the amount payable is paid.
Prepare and sign	Prepare and sign a certificate specifying the amount due and send it to the Collector of the district who shall proceed to recover the same.
File	File an application to the appropriate Magistrate who shall recover the amount as if it were a fine imposed.

Recovery of Tax – Section 79

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

(a) the proper officer **may deduct or may require any other specified officer to deduct** the amount so payable from any money owing to such person which may be under the control of the proper officer or **such other specified officer**;

(b) the proper officer may recover or **may require any other specified officer to recover** the amount so payable **by detaining and selling any goods belonging to such person** which are under the control of the proper officer or such other specified officer;

(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;

Recovery of Tax – Section 79

(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;

Recovery of Tax – Section 79

(d) the proper officer may, in accordance with the rules to be made in this behalf, **distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid**; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer **may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue**;

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

Recovery of Tax – Section 79

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

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, **may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and** credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, **the amount to be credited to the account of the respective Governments** shall be in proportion to the amount due to each such Government.

Explanation - For the purposes of this section, the **word person shall include distinct persons as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25** .

Section 80: Payment of taxes and other amounts in instalments;

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty-four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed;

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Transfer of Property – when void - Section 81 of CGST Act 2017

Charge created on property (sale / mortgage / exchange / other mode of transfer) **with the intention of defrauding the Government revenue.**



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graph TD; A[Charge created on property (sale / mortgage / exchange / other mode of transfer) with the intention of defrauding the Government revenue.] --> B[transfer is void against any claim in respect of tax or any other sum payable.]; B --> C[Charge or Transfer not void if: (a) For adequate consideration; (b) in good faith; (c) without notice of the pendency of proceedings against transferor; (d) without notice that tax or other sum is payable by transferor; (e) With prior permission of the Proper Officer.];
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transfer is void against any claim in respect of tax or any other sum payable.

Charge or Transfer not void if:

(a) For adequate consideration; (b) in good faith; (c) without notice of the pendency of proceedings against transferor; (d) without notice that tax or other sum is payable by transferor; (e) With prior permission of the Proper Officer.

Section 81: Transfer of property to be void in certain cases;

Section 82: Tax to be first charge on property;

Section 83: Provisional attachment to protect revenue in certain cases

Section 81: *Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:*

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Section 82: *Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.*

Section 83: (1) *Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.*

(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)

Preventive measures for Recovery of Tax – provisions under Section 81 to Section 83;

Section	Particulars	Preventive Measures
81	Transfer of property to be void in certain cases where it is done with the intention of defrauding the Govt revenue;	Such transfer or charge void against any claim of tax dues except where the transfer is made for adequate consideration and in good faith and without notice of pending tax litigation proceedings;
82	Tax to be first charge on property;	Save (exception) as otherwise provided under IBC;
83	Provisional attachment to protect revenue in certain cases;	Commissioner may attach provisionally any property or bank account belonging to the taxable person for maximum period of one year;

Continuation and validation of certain recovery proceedings – Section 84

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

*(a) where such **Government dues are enhanced** in such **appeal, revision or other proceedings**, the Commissioner shall serve upon **the taxable person or any other person another notice of demand** in respect of the amount by which such Government dues are enhanced and **any recovery proceedings** in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of **such appeal, revision or other proceedings** may, without the service of any fresh notice of demand, be continued from the stage at which **such proceedings stood immediately** before such disposal;*

*(b) where such Government dues are **reduced in such appeal**, revision or in other proceedings-*

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

*(ii) the Commissioner shall **give intimation of such reduction to him and to the appropriate authority** with whom **recovery proceedings** is pending;*

*(iii) **any recovery proceedings initiated** on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at **which such proceedings stood immediately** before such disposal.*

Q.1

As per provisions contained in Section 73 of the CGST Act, 2017, the Proper Officer is empowered to issue an Order with a maximum demand up to _____?

- A. Amount of Tax + Interest + Penalty @ 10% of Tax;
- B. Amount of Tax + Interest + Penalty @ 10% of Tax or Rs. 10,000-00, **whichever is higher;**
- C. Amount of Tax + Interest + Penalty @ 10% of Tax or Rs. 10,000-00, **whichever is lower;**
- D. Amount of Tax + Interest + Penalty @ 20% of Tax or Rs. 10,000-00, **whichever is lower;**

Answer:- B

The time limit for issue of Order in cases not involving fraud, willful misstatement or suppression of facts to evade tax as per provisions U/S 73 of CGST Act is _____?

- A. 1 Year;
- B. 2 Years;
- C. 3 Years;
- D. 5 Years;

Answer:- C

The time limit for issue of Order in cases involving fraud, willful misstatement or suppression of facts to evade tax as per provisions U/S 74 of CGST Act is _____?

- A. 1 Year;
- B. 2 Years;
- C. 3 Years;
- D. 5 Years;

Answer:- D

As per provisions contained in Section 76 CGST Act / relevant CGST Rules, any amount of tax collected shall be deposited to the credit of the Central or a State Government in circumstances _____?

- A. where the supplies in respect of which such amount was collected are taxable;
- B. regardless of whether the supplies in respect of which such amount was collected are taxable or not;
- C. where the supplies in respect of which such amount was collected are not taxable;
- D. where the amount of tax collected is in excess of input tax credit;

Answer:- B

The time limit for issue of Order in cases where tax collected but not paid to the Government as per provisions U/S 76 of CGST Act is _____?

- A. 1 Year from the date of issue of Notice;
- B. 2 Years from the date of issue of Notice;
- C. 3 Years from the date of issue of Notice;
- D. 5 Years from the date of issue of Notice;

Answer:- A

Section _____ CGST Act deals with tax erroneously collected and deposited with the Central or a State Government?

- A. 57;
- B. 74;
- C. 76;
- D. 77;

Answer:- D

_____ are consequences of IGST erroneously classified and paid to the Central Government or a State Government instead of CGST and SGST or UGST?

- A. Seek refund of IGST and make payment of CGST and SGST or UGST with interest;
- B. Seek refund of IGST and make payment of CGST and SGST or UGST without interest;
- C. Adjust against future tax liability;
- D. Seek refund of CGST and SGST or UGST and make payment of IGST;

Answer:- B

SCN stands for _____?

- A. Special Cause Notification;
- B. Serve the Cause Notice;
- C. Suppression Cause Notice;
- D. Show Cause Notice;

Answer:- D

As per provisions under GST law / GST Rules, Notice can be served to the taxable person by _____ of the following modes of communication?

- A. By Registered Post;
- B. By sending a communication to the registered email id of the taxable person, if any;
- C. By making it available on the Common Portal;
- D. Any or All of the above;

Answer:- D

As per provisions under CGST Act / CGST Rules, the prescribed monetary limit for issuance of Notice and Orders by the Superintendent of Central Tax for CGST dues is _____?

- A. Not exceeding Rs. 10 lakhs;
- B. Not exceeding Rs. 20 lakhs;
- C. Above Rs. 10 lakhs but not exceeding Rs. 1 crore;
- D. Above Rs. 20 lakhs but not exceeding Rs. 2 crore;

Answer:- A

_____ is the Rate of Penalty in situations involving defaults U/S 74 of CGST Act if the payment has been made within 30 days of the issuance of the Notice (SCN)?

- A. Ten per cent;
- B. Fifteen per cent;
- C. Twenty per cent;
- D. Twenty-five per cent;

Answer:- D

_____ is the Rate of Penalty in situations involving defaults U/S 74 of CGST Act if the payment has been made within 30 days of the issuance of the Notice (SCN)?

- A. Ten per cent;
- B. Fifteen per cent;
- C. Twenty per cent;
- D. Twenty-five per cent;

Answer:- D

**As per provisions under CGST Act / CGST Rules,
_____ is the maximum number of times for which
Personal Hearing can be adjourned?**

- A. one;
- B. two;
- C. three;
- D. four;

Answer:- C

As per provisions under CGST Act / CGST Rules, in a situation where Notice is issued for total tax dues (tax, interest and penalty) amounting to Rs. 1.00 crore, can Proper Officer issue Order in excess of Rs. 1.00 crore?



- A. Yes, where it is necessary to do so;
- B. No, Proper Officer is not empowered to do so;
- C. Yes, at the discretion of Proper Officer;
- D. Yes, at the discretion of Principal Commissioner of Central Tax;

Answer:- B

_____ is the time limit for payment of tax dues from the date of service of Order?

- A. One month;
- B. Two months;
- C. Three months;
- D. Four Months;

Answer:- C



**SUCCESS IS NOT FINAL;
FAILURE IS NOT FATAL:
IT IS THE COURAGE TO CONTINUE
THAT COUNTS.**

WINSTON V. CHURCHILL

This PPT is prepared purely for academic and knowledge sharing purposes with the aid of information / material / law provisions freely available on the internet. This PPT does not claim coverage of exhaustive provisions under CGST Act.

Thanks for your Attention!!!

Any Questions???