

# Assessment



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# **Demand & Recovery**

**Section 73 to 84**

**Rule 142 to 161**

# Demand and Recovery



# CGST Act, 2017

Sr. No	Section	Provision
1	Sec 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 wilful misstatement or suppression of facts
2	Sec 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 wilful misstatement or suppression of facts
3	Sec 75	General provisions relating to determination of tax
4	Sec 76	Tax collected but not paid to Government
5	Sec 77	Tax wrongfully collected and paid to Central Government or State Government
6	Sec 78	Initiation of recovery proceedings
7	Sec 79	Recovery of tax
8	Sec 80	Payment of tax and other amount in Instalments
9	Sec 81	Transfer of property to be void in certain cases
10	Sec 82	Tax to be first charge on property
11	Sec 83	Provisional attachment to protect revenue in certain cases
12	Sec 84	Continuation and validation of certain recovery proceedings

# CGST Rules, 2017

Sr No	Rule	Provision
1	Rule 142	Notice and order for demand of amounts payable under the Act
2	Rule 142A	Procedure for recovery of dues under existing laws.
3	Rule 143	Recovery by deduction from any money owed
4	Rule 144	Recovery by sale of goods under the control of proper officer
5	Rule 145	Recovery from a third person
6	Rule 146	Recovery through execution of a decree, etc
7	Rule 147	Recovery by sale of movable or immovable property
8	Rule 148	Prohibition against bidding or purchase by officer
9	Rule 149	Prohibition against sale on holidays
10	Rule 150	Assistance by police
11	Rule 151	Attachment of debts and shares, etc

# CGST Rules, 2017

Sr No	Rule	Provision
12	Rule 152	Attachment of property in custody of courts or Public Officer
13	Rule 153	Attachment of interest in partnership
14	Rule 154	Disposal of proceeds of sale of goods and movable or immovable property.
15	Rule 155	Recovery through land revenue authority
16	Rule 156	Recovery through court
17	Rule 157	Recovery from surety
18	Rule 158	Payment of tax and other amounts in instalments
19	Rule 159	Provisional attachment of property
20	Rule 160	Recovery from company in liquidation
21	Rule 161	Continuation of certain recovery proceedings

# CONTENTS

## CHAPTER XV OF CGST Act, 2017

### DEMANDS

#### DEMAND :

**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 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 wilful-misstatement or suppression of facts

#### DEMAND :

**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.

# CONTENTS

## CHAPTER XV OF CGST Act, 2017

### RECOVERY

#### RECOVERY:

**SECTION 78:** Initiation of recovery proceedings.

**SECTION 79:** Recovery of tax

**SECTION 80:** Payment of tax and other amount in instalments



**SHOW  
CAUSE  
NOTICE**

## What is Show Cause Notice?

### SHOW CAUSE NOTICE

- ◎ SCN
- ◎ A notice served on the tax payer
- ◎ Asking him
- ◎ To show cause
- ◎ As to Why
- ◎ A particular action should not be taken
- ◎ by the department.
- ◎ [Action –Cancellation, Demanding Tax, Denial of Option, etc]



## SHOW CAUSE NOTICE

### ◎ Circumstances under which SCN is issued?

S.No	SCN For	Form
1	Denial of Option to Pay Tax u/s. 10	GST-CMP-05
2	For Cancellation of Regular Registration	GST-REG-17
3	For Rejection of application for revocation of Cancellation of Registration	GST-REG-23
4	For Cancellation of Provisional Registration	GST-REG-27
5	For Disqualification of GST Practitioner	GST-PCT-03

## SHOW CAUSE NOTICE

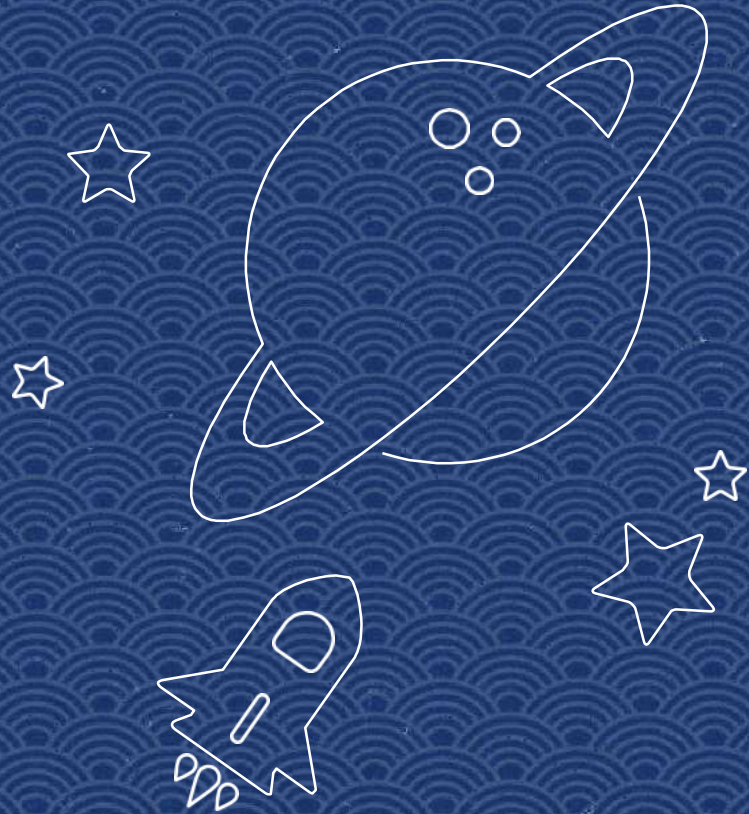
### ◎ Circumstances under which SCN is issued?

S.No	SCN For	Form
6	Rejection of Refund Claim	GST-REF-08
7	Assessment under Section 63	GST-ASMT-14

**Which Show Cause Notice which we are going to look into?**

**SHOW CAUSE NOTICE - Under Section 73 & 74**





# 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 73(1)

- Any tax
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- for any reason, **other than**
- the reason of **fraud or any wilful-misstatement or suppression of facts**
- to evade tax,
- PROPER OFFICER shall serve notice on the person



# Section 73(1)... Contd..

- 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 Act.



**What is the Time  
Limit for  
Issuance of  
Notice?**

**Section 73(2)  
to be read with  
Section 73(10)**

**73(2)**

*“at least three months  
prior to the time limit  
specified in sub-section  
(10) for issuance of  
Order”*

**73(10)**

within three years from the  
due date for furnishing of  
annual return for the  
financial year to which the  
tax relates to

or

within three years from the  
date of erroneous refund.



## EXAMPLE WITH DATES

Financial Year 2017-18	Date of Passing Order	Date of Issuance of SCN
Due Date for filing of Annual Return: <b>07<sup>th</sup> February 2020.</b>	within three years from the due date for furnishing of annual return for the financial year to which the tax relates to  i.e. <b>06<sup>th</sup> February 2023</b>	at least three months prior to the time limit specified in sub- section (10) for issuance of order”  i.e. upto <b>06<sup>th</sup> November 2022.</b>
<b>31<sup>st</sup> Dec 2018</b>	<b>30<sup>th</sup> Dec 2021</b>	<b>29<sup>th</sup> Sept 2021</b>

**Date  
Chart for  
Serving  
of SCN  
&  
Passing  
of Order  
for  
73(2)**

<b>Year</b>	<b>Due Date for Filing of Annual Return</b>	<b>SCN Can be issued upto (2Yrs &amp; 9M Approx from DD of AR..)</b>	<b>Order to be passed within (3Yrs from DD of AR)</b>
<b>2017-18</b>	<b>07-Feb-2020 (TN)</b>	<b>06-Nov-22</b>	<b>06-Feb-23</b>
<b>2018-19</b>	<b>30-Jun-2020</b>	<b>29-Mar-23</b>	<b>29-Jun-23</b>
<b>2019-20</b>	<b>31-Mar-2021</b>	<b>31-Dec-23</b>	<b>31-Mar-24</b>



## Section 73(3)

**Statement in Lieu of A Full Fledged SCN.**

**Note: 1<sup>st</sup> Year SCN has to be issued.**

**Mr. X a Tax Payer**

Received Notice for the Financial Year 2017-18

For wrong availment of ineligible Credit.

Same Mistake Continues in 2018-19 and 2019-20

**What will department do?**

It has already issued a SCN for the Fin. Year 2017-18.

Should it again issue a detailed SCN for the subsequent period?

**The Answer is NO.**

**73(3) Authorises an Officer**

**To issue a “Statement” containing the details of the tax demanded or ITC to be reversed.**

**“Statement of Demand”**

**Section 73(4)→**

**Deems the issuance of Statement as “service of notice” only if grounds relied upon for such tax periods are the same as are mentioned in the earlier notice for the 1<sup>st</sup> year.**

**TAX PAYER:** (Before Issuance of SCN / Statement) Officer Officer, Please Wait...

Kindly accept this letter.... I have paid the **ENTIRE** taxes and interest as ascertained by me/you. I am submitting the necessary challan copies too... Kindly let me go.

**OFFICER:** Thank you Gentleman.

I need not / cannot issue any SCN or Statement.

**TAX PAYER:** Hurray...!!!! No Penalty!!!



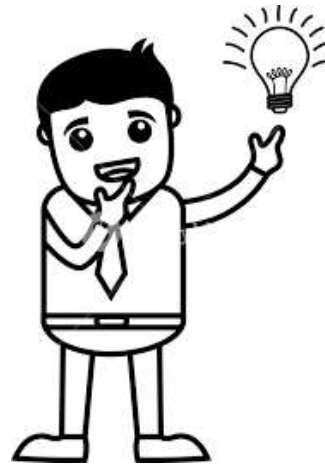
Section  
73(5)\*  
&  
73(6)\*



**Section  
73(7)\***

**OFFICER:** Gentleman, We have gone through your letter and it is seen that you have not paid the full amount (Tax / Interest). Hence, we have issued a SCN, demanding the balance amount.

**TAX PAYER:** Sir..... Sir.....  
Now what do I do???.....)



**TAX PAYER:** (After Issuance of SCN / Statement)  
Officer Officer,

**Section 73(8)\*** Kindly accept this letter.... I have paid the **BALANCE** taxes and interest as demanded in the notice **WITHIN 30 DAYS OF ISSUANCE OF notice / statement.** I am submitting the necessary challan copies too... Kindly drop the penalties please....

**OFFICER:** Thank you Gentleman. The notice is deemed to be concluded and No Penalty shall be payable by you.

**TAX PAYER:** Hurray...!!!! No Penalty!!!`





# \*Conditions for No Penalty

Only where the TAX AMOUNT IS OTHER THAN

self-assessed tax

or

any amount collected as tax

Which is not been paid within a period of thirty days from the due date of payment of such tax.

i.e. Input Tax Credit or Tax not collected or not assessed

What is the amount is self assessed tax or it is an amount which is collected as tax?

Sec 73(9) read with 73(11) Says:

The officer shall issue an order demanding tax, interest and penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher.



# SECTION 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 wilful-misstatement or  
suppression of facts





# Section 74(1)

- Any tax
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- by reason of fraud or
- any wilful-misstatement or
- suppression of facts to evade tax,
- PROPER OFFICER shall serve notice on the person



# Section 74(1)... Contd..

- 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 equivalent to the tax. **(100% of Tax as Penalty)**



What is the Time  
Limit for  
Issuance of  
Notice?

Section 74(2)  
to be read with  
Section 74(10)

74(2)

*“at least SIX months  
prior to the time limit  
specified in sub-section  
(10) for issuance of  
order”*

74(10)

within a period of FIVE YEARS  
from the due date for furnishing  
of annual return for the financial  
year to which the tax relates to  
or  
within FIVE YEARS from the  
date of erroneous refund.

## EXAMPLE WITH DATES

Financial Year 2017-18

Date of  
Passing Order

Date of  
Issuance of  
SCN

Due Date for  
filing of  
Annual  
Return:  
**07<sup>th</sup> February  
2020.**

within FIVE years  
from the due date for  
furnishing of annual  
return for the financial  
year to which the tax  
relates to

i.e.  
**06<sup>th</sup> February  
2025**

at least SIX months  
prior to the time limit  
specified in sub-  
section (10) for  
issuance of order"

i.e. upto  
**05<sup>th</sup> August  
2024.**

**31<sup>st</sup> Dec 2018**

**30<sup>th</sup> Dec 2023**

**29<sup>th</sup> June 2023**



**Date  
Chart for  
Serving  
of SCN  
&  
Passing  
of Order  
for  
74(2)**

<b>Year</b>	<b>Due Date for Filing of Annual Return</b>	<b>SCN Can be issued upto (4Yrs &amp; 6M Approx from DD of AR..)</b>	<b>Order to be passed within (5Yrs from DD of AR)</b>
<b>2017-18</b>	<b>07-Feb-20 (TN)</b>	<b>05-Aug-24</b>	<b>06-Feb-25</b>
<b>2018-19</b>	<b>30-Jun-20</b>	<b>28-Dec-24</b>	<b>29-Jun-25</b>
<b>2019-20</b>	<b>31-Dec-21</b>	<b>29-Jun-26</b>	<b>30-Dec-26</b>

**TAX PAYER:** (Before Issuance of SCN / Statement)  
Officer Officer, Please Wait...

Kindly accept this letter.... I have paid the **ENTIRE**  
taxes and interest as ascertained by me/you.

Section

74(5)\*

&

74(6)\*

Along with **15% Penalty** I am submitting the  
necessary challan copies too... Kindly let me go.

**OFFICER:** Thank you Gentleman.

I need not / cannot issue any SCN or Statement.

**TAX PAYER:** Thank God. **Escaped with 15%**





**TAX PAYER:** (After Issuance of SCN / Statement)

Officer Officer,

Kindly accept this letter.... I have paid the **BALANCE** taxes **Section** and interest **ALONG WITH 25% Penalty** as demanded in the notice **WITHIN 30 DAYS OF ISSUANCE OF notice / 73(8)\* statement**. I am submitting the necessary challan copies too... Kindly drop the notice....

**OFFICER:** Thank you Gentleman. The notice is deemed to be concluded.

**TAX PAYER:** Thank God. Missed 15%, Escaped with 25%

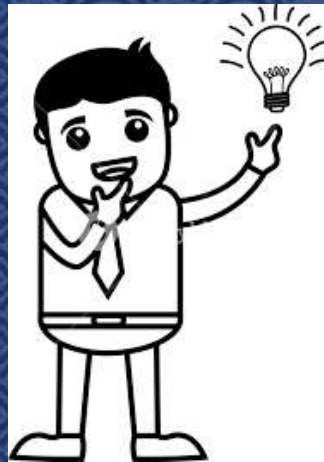




# Issuance of Order - 74(9)

- After considering the representations made by the tax payer,
- the officer shall determine the tax amount along with interest and penalty due and
- issue an order.

➤ What's NEXT????





# Conclusion of Proceedings - Sec 74(11)

**TAX PAYER:** (After Passing of Order)

Officer Officer,

Kindly accept this letter.... I have paid the taxes and interest

**ALONG WITH 50% Penalty** as Confirmed in the Order [**WITHIN 30 DAYS OF ISSUANCE OF ORDER**]. I am submitting the necessary challan copies too... Kindly close the case..

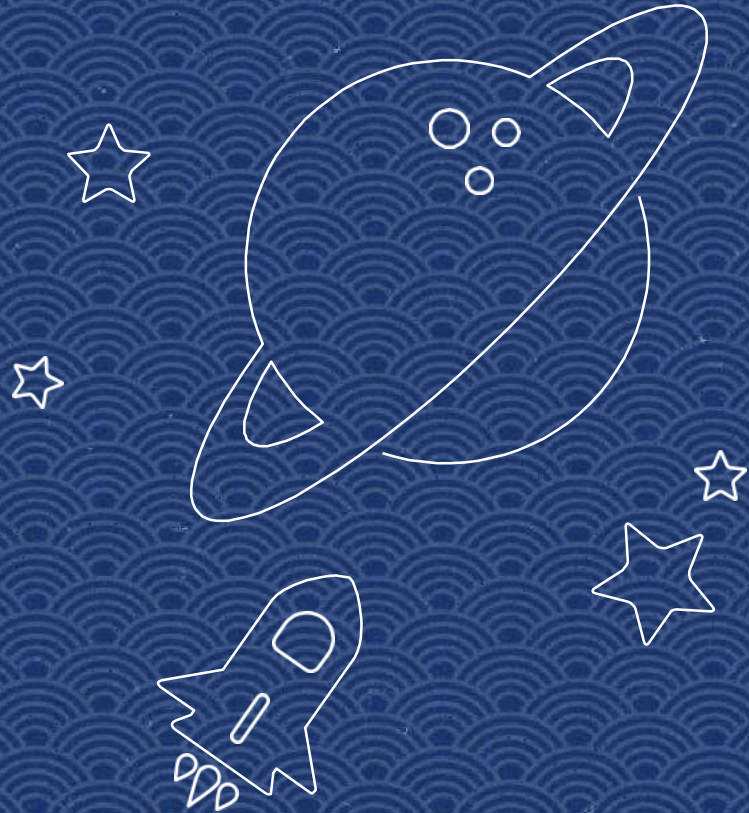
**OFFICER:** Thank you Gentleman. The notice is deemed to be concluded.

**TAX PAYER:** Thank God. Missed 15%, Missed 25%, Escaped with 50%. Had I not opted, penalty would have been 100%....



# SECTION 75

General Provisions relating to Determination  
of Tax





# SECTION 75(1) - Exclusion of STAY PERIOD

- If service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal,
- the period of such stay shall be excluded in computing the period specified in
- 73(2), 73(10) & 74(2), 74(10)



# SECTION 75(2) - 74(1) auto converts to 73(1)

- any Appellate Authority or Appellate Tribunal or court
- Concludes that notice under section 74(1) is not sustainable
- for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established
- Proper officer shall determine the liability as if notice was issued under Section 73(1)



## SECTION 75(3) - Time to Pass Order on Remanded Matter

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



# SECTION 75(4) - Personal Hearing

- An opportunity of “being heard” shall be granted
- when a request is received in writing
- OR
- any adverse decision is contemplated against such person.



## **SECTION 75(5) - Adjournments**

- if sufficient cause is shown by the person chargeable with tax,
- Officer shall grant time to the said person and
- adjourn the hearing
- for reasons to be recorded in writing.
- Maximum –3 adjournments:

**SECTION 75(6) –** The proper officer, in his order, shall set out the relevant facts and the basis of his decision.



# SECTION 75(7) -Order Cannot Travel beyond SCN

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



**OTHER  
PROVISIONS  
UNDER  
SECTION 75**

**Section 75(8)**

If appellate fora modifies the demand amount, the modified demand only will be enforceable.

**Section 75(9)**

The interest on the tax liability / demand shall be payable **whether or not specified in the order** confirming the tax liability.

**Section 75(10)**

If orders not passed within 3/5 years as the case may be, adjudication proceedings are deemed to be concluded.

**Section  
75(11)**

There is an issue Which is decided against the Revenue

(1) Decided by	(2) Appeal Filed with	(3) Final Order by
Appellate Authority	Appellate Tribunal	Appellate Tribunal
Appellate Tribunal	High Court.	High Court.
High Court.	Supreme Court	Supreme Court

AND it has an implication on the case in hand, then,  
The time period between the order from the Col. (1) & Col. (3) shall be excluded from the time period of 3 Years / 5 Years as the case may be.



# Section 75(12) - Straight Recovery???

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

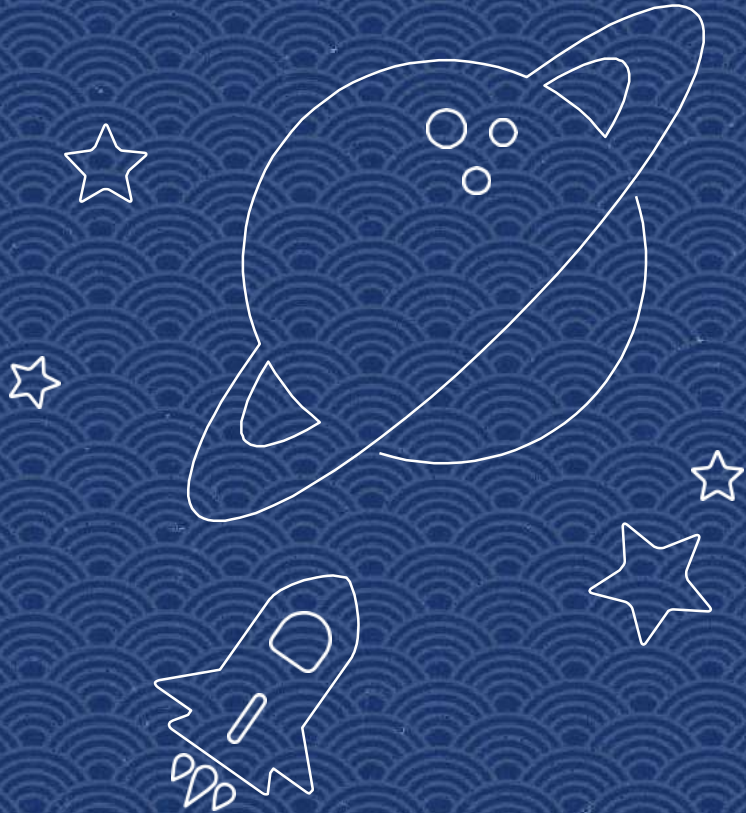
Ref: LC Infra Projects P Ltd Case [TS-776-HC-2019(KAR)-NT] + Jharkhand HC

Section 75(13) – Once penalty imposed under 73/74 no other penalty under this act shall be applicable for the same act.



# SECTION 76

**Tax collected but not  
paid to Government.**





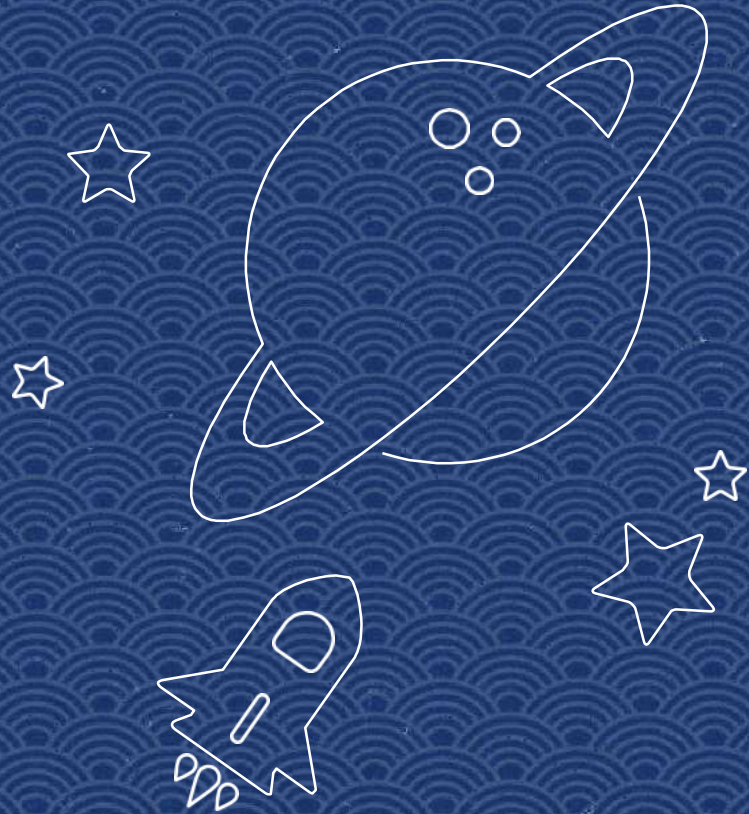
- Any amount representing tax shall be paid forthwith irrespective of the fact whether the supply was taxable or not.
- Proper Officer to Issue SCN asking why amount should not be demanded along with interest and penalty (100% of tax)
- After representation, officer to determine the amount and the person shall pay the amount so determined.
- Interest also to be paid as per Section 50.
- Personal hearing shall be granted where request is received in writing.
- Order to be issued within 1 Year from the date of issuance of SCN



- If issuance of order is stayed, the said period shall be excluded in calculating the one year time limit to pass the order.
- Proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- Person who has borne the incidence of tax shall claim refund as per Section 54.
- **NO MENS REA REQUIRED**
- **NO TIMELIMIT TO ISSUE NOTICE.**

**SECTION 76**





# SECTION 77

**Tax wrongfully collected  
and paid to Central  
Government or State  
Government.**



# SECTION 77(1) - Wrong Head of Payment

- Nature of Supply was - Interstate
- Wrongly Understood as = Intra State
- Paid Wrongly = CGST + SGST/UTGST
- Liability was = IGST
- Resolution??
- Refund Application to be filed for claiming C/SGST .
- [Rule 89 of CGST Rules - *(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;*] {RefSec. 19 of IGST Act –No Interest}



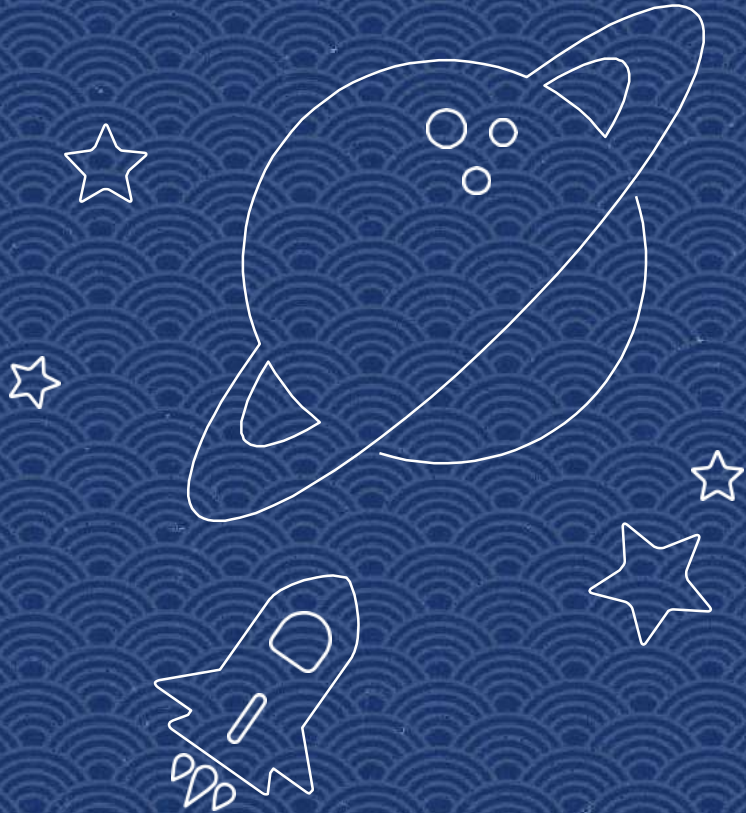
# SECTION 77(2) - Wrong Head of Payment

- Nature of Supply was - Intrastate
- Wrongly Understood as = Inter State
- Paid Wrongly = IGST
- Liability was = CGST + SGST/UTGST
- Resolution??
- Refund Application to be filed
- [Rule 89 of CGST Rules - *(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;*] {Ref Sec. 19 of IGST Act – No Interest}



# SECTION 78

**Initiation of recovery  
proceedings.**





# SECTION 78

- Once an “order” is passed under this Act,
- Confirming the tax demand and/or interest and/or penalty
- The assessee shall pay the said amount within **THREE MONTHS** from the date of receipt of the order.
- If not paid, recovery proceedings shall be initiated.
- Proper Officer can give time less than three months to remit the tax in the interest of revenue (by mention in order).



# Queries Please





Thank you

