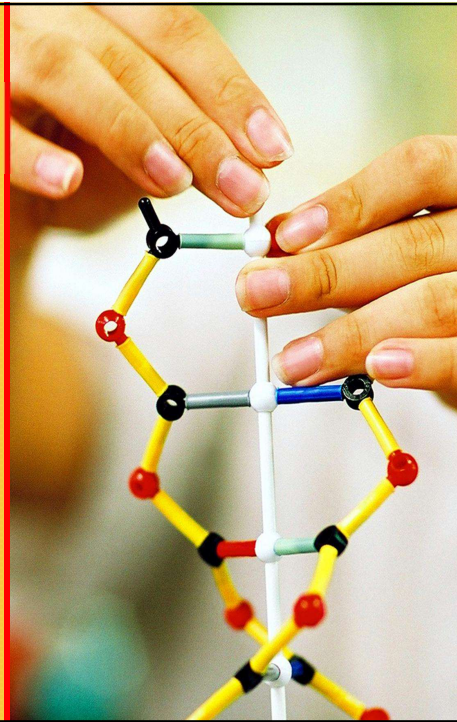


Demand And Recovery



Common Provisions

- **Chapter-I** - Preliminary **To Chapter XXI** - Miscellaneous – Common for CGST/SGST – **Sec.20/Sec.21 of IGST/UTGST Act** – borrows provisions of CGST Act
- **Proper Officer** (Sec.2 (91)) – Commissioner or Officer of Central Tax authorized by Board.
- **Officers of State/UT** (Sec.6(1)) – Officers appointed under SGST or UTGST – authorized to be Proper Officer. P.O shall also issue order under SGST/UTGST under intimation to jurisdictional officer. (Sec.6(1)(a))

Common Provisions

- **Demand & Recovery** – Sec.73 & Sec.74- **Proper Officer**. **Refund** – Sec.54 – **Proper Officer** – **Assessment** – Sec.60 to Sec.64.
- **Appeals** -1st Appeal (Sec.107) – Against order passed under CGST/SGST/UTGST Act.
- 2nd Appeal (Sec.112) – Against order passed u/s 107, 108 of CGST/SGST/UTGST Act.
- Appeal to High Court (Sec.117) – Against order passed by State Bench or Area Bench of Tribunal
- Appeal to Supreme Court (Sec.118) – Against order passed by National Bench or Regional Bench of Tribunal

NORMAL PERIOD – Sec. 73

Order before 3yrs from Annual Return

SCN – 3 months before Order

SOD for subsequent period

Tax/Interest – Paid before SCN – NO PENALTY

Tax/Interest – Paid within 30 days of SCN – NO PENALTY

Tax/Interest – Paid within 30 days of Order – 10% PENALTY

NO SUPPRESSION/FRAUD/MISTATEMENT CASES

EXTENDED PERIOD – SEC. 74

Order before 5yrs from Annual Return

SCN – 6 months before Order

SOD for subsequent period – No Suppression

Tax/Interest – Paid before SCN – 15% PENALTY

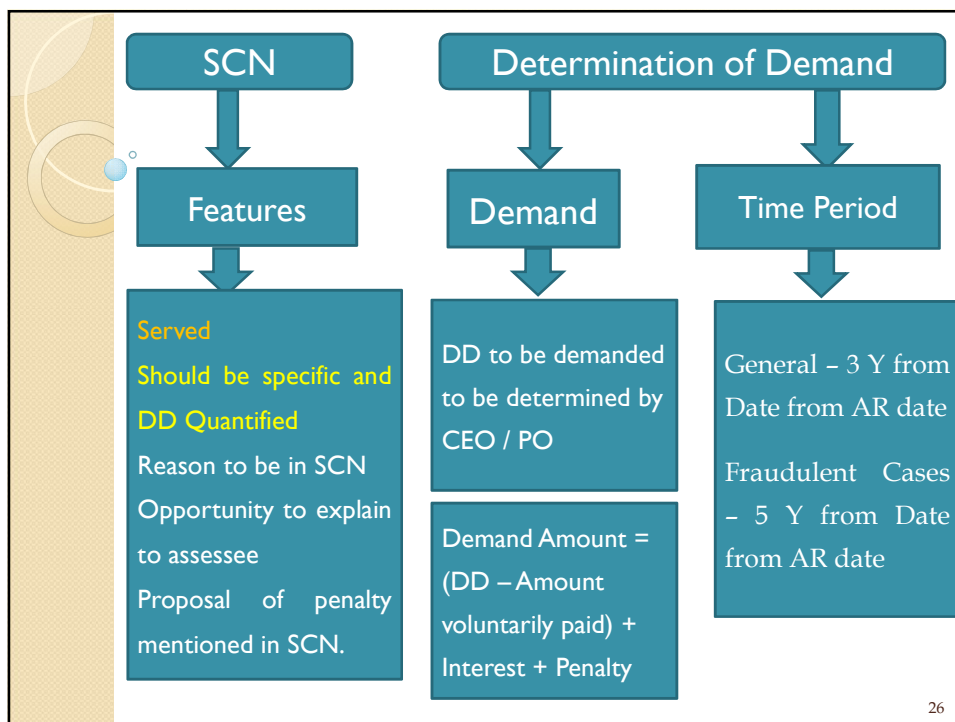
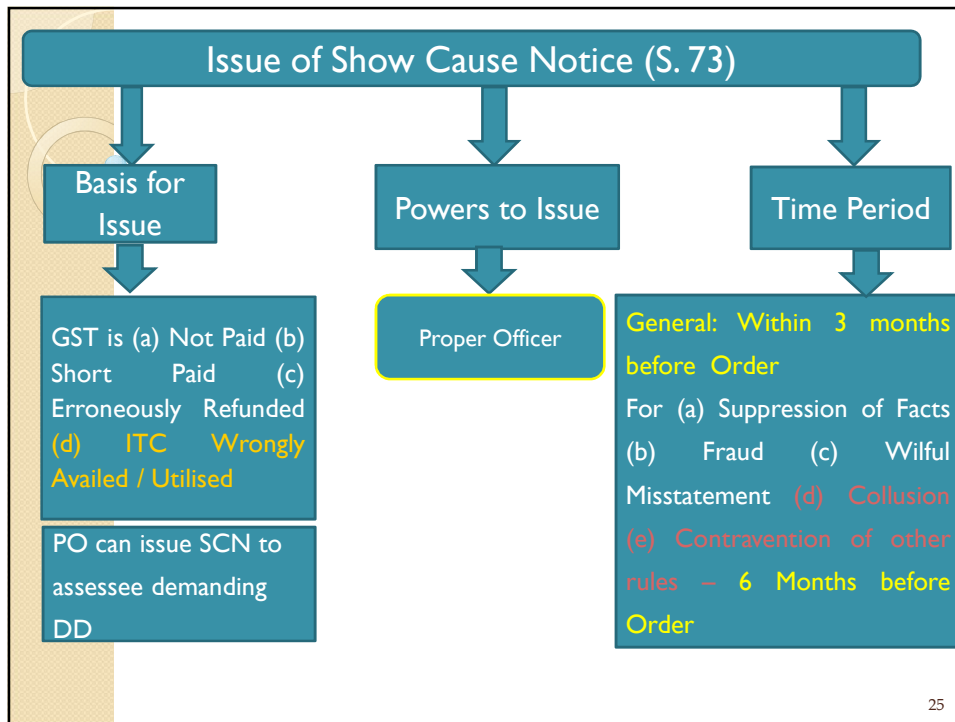
Tax/Interest – Paid within 30 days of SCN – 25% PENALTY

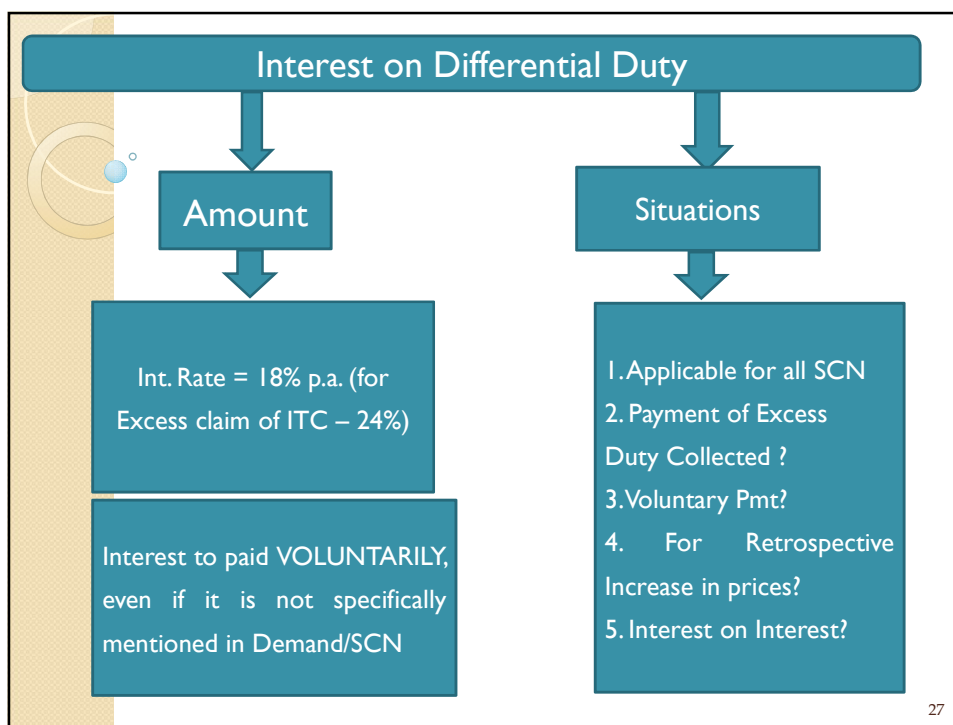
Tax/Interest – Paid within 30 days of Order – 50% PENALTY

“SUPPRESSION”/FRAUD/MISTATEMENT CASES

Suppression of Facts – General Defences

- **No requirement for Disclosure - Collector of Central Excise vs Cemphar Drugs & Liniments 40 ELT 276 (SC)**
- **Question of Interpretation / Bona-fide Belief - CCE vs Nestle India Ltd 237 ELT 102 (SC)**
- Audit Conducted for same period without any findings
- Dept is aware of Proceedings / All facts disclosed either in audit or Otherwise
- Meaning of the Word “Fraud”/ “Wilful Mistatement”





Penalty Issues

- Can penalty be reduced / waived by AO?
- Can penalty be held applicable even without suppression?
- Can penalty be imposed even if payment is made before SCN?
- For reduced penalty, should the penalty also be paid within 30 days?
- Is penalty to be paid in Cash or through Credit?
- Is reduced penalty applicable if assessee goes on Appeal?
-

Demand-Miscellaneous

- If appellate authority holds extended period not invokable demand to be re-adjudicated for normal period.
- **Personal hearing** required if **adverse action** contemplated. **3 adjournments**
- Amount of tax, interest & penalty **shall not exceed amount specified in notice**
- **Interest payable whether or not mentioned in order**
- **Deemed conclusion** of proceedings **if order not issued within 3 years/5 years.**

Demand-Issues

- Can the PO raise additional grounds in Order which are not part of SCN?
PO to set out facts & basis of decision in his order. **Order shall not traverse beyond SCN.**
- Effect of Stay on Limitation Period?
- Remand Pursuant to Appellate Order Time Limit?
- Is Time Limit applicable to Self Assessment Tax shown in Return as not paid?

Tax Collected but not Deposited (Sec. 76)

- Assessee Shall forthwith deposit the same to the Govt.
- Notwithstanding anything contained in any order or direction of Appellate Authority / Tribunal / Court / other provision of this Act / Rules made / Any other law

Issues

- Should deposit be made, even when Supplies are Exempt?
- What if excess Tax is Collected, is the correct tax recoverable or even excess tax recoverable?
- Can the Govt. retain such excess tax?
- Is option of reduced penalty applicable?
- What is time limit applicable - 3 yr/5 yr?

Tax Wrongly paid (S.19/S.77)

Sec 19 of IGST Act 2017 / Sec 77 of CGST Act

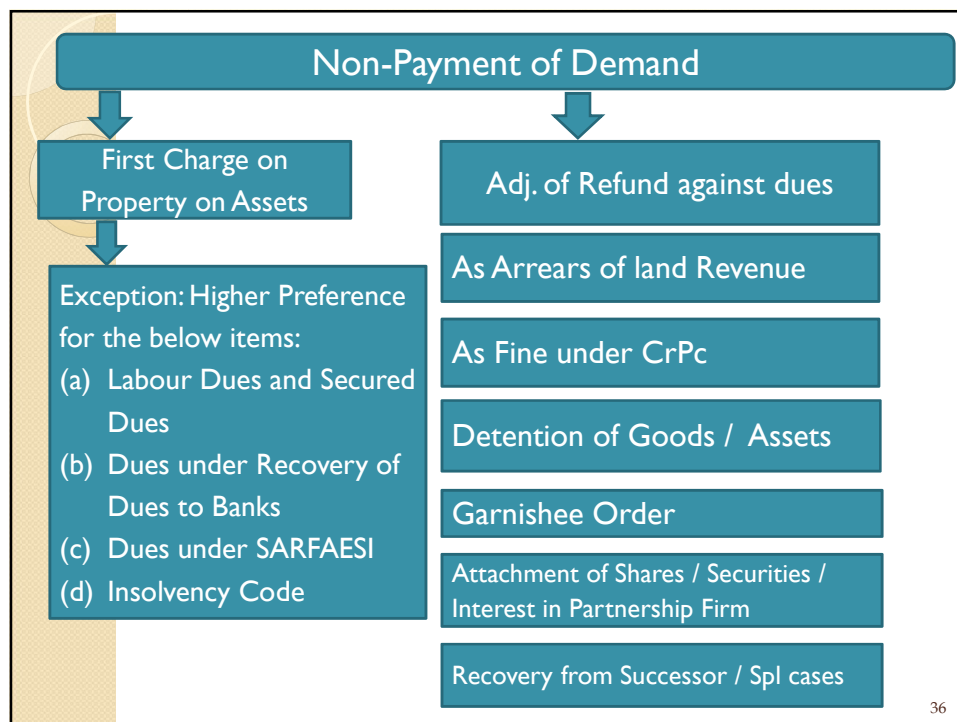
- (1) A registered person who has paid **integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply**, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.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

Recovery of Tax (Sec. 78)

- Once the demand is confirmed, the amount demanded should be paid within **3 months** from date of service of such order.
- If the amount is not paid, **recovery proceedings shall be initiated** – Sec. 78
- **3 months can be reduced by 'proper officer'** (Principal Commissioner/Commissioner of Central) for reasons to be recorded in writing - *proviso* to Sec. 78.
- 'Proper Officer' = DC / AC [State Govt. to prescribe].

Payment in Instalments (Sec. 80)

- On an application filed by a taxable person, the Commissioner/Chief Commissioner may, for reasons to be recorded in writing,
 - extend the time for payment or
 - Allow payment in monthly instalments not exceeding 24, subject to payment of interest u/s 50 with such conditions and limitations as may be prescribed
- Application seeking extension in time or allowing payment in instalments, application shall be made in form GST DRC-20. On receipt of report from jurisdictional officer, Commissioner may issue order in form GST DRC-21 - rule 158(1) of CGST Rules, 2017.
- This facility is not allowed if (a) Recovery if recovery process is on or (b) amount is less than Rs 25,000. or (c) other than the amount due as per the liability self-assessed in any return,
- Default in payment of one instalment on its due date, due shall be recovered without further notice



Recovery of Tax - Issues

- Can recovery be made from Distinct Person?
- Can CGST Officer recover SGST Dues and vice versa?
- Can recovery be made pending Appeal?
- Can the decision to not grant instalments u/s 80 be appealed?