

Demand and Recovery



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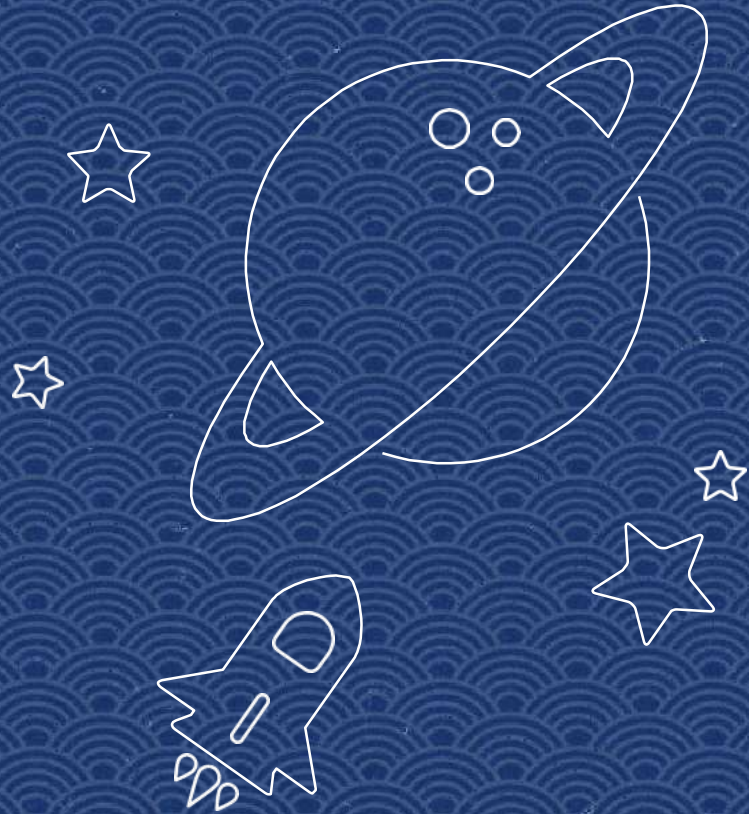
Section 73 to 84

Rule 142 to 161

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]



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.

Section 73(3)

Statement in Lieu of A Full Fledged SCN.

Note: 1st 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 1st 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!!!

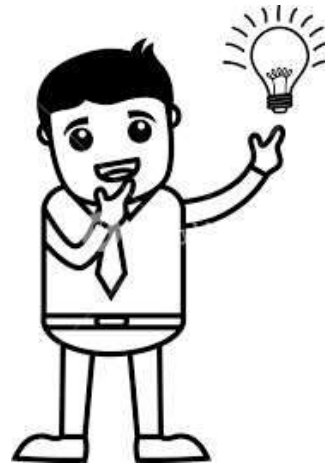


Section
73(5)*
&
73(6)*

**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.*

What if:

- Tax Payer does not pay up the taxes along with interest
- Either before issuance of SCN/Statement
- Or
- After issuance but within 30 days from the issuance of notice?
- Where the tax payer contests the issue, after considering the representations made by the tax payer, the officer shall determine the tax amount along with interest and 10% of tax amount or Rs.10,000/- whichever is higher and issue an order.

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.

Section 74(3)

Statement in Lieu of A Full Fledged SCN.

Note: 1st Year SCN has to be issued.

Section 74(4)→

Mr. X a Tax Payer

Received Notice for the Financial Year 2017-18

For excess availment of input tax 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.

74(3) Authorises an Officer

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

“Statement of Demand”

Deems the issuance of Statement as “service of notice” only if grounds relied upon for such tax periods except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax are the same as are mentioned in the earlier notice for the 1st 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.

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.

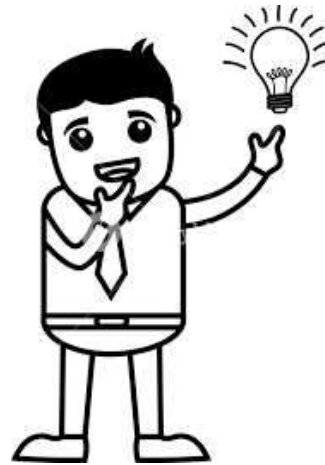
I need not / cannot issue any SCN or Statement.

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



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

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



Section
73(7)*

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
73(8)* notice **WITHIN 30 DAYS OF ISSUANCE OF** notice /
statement. I am submitting the necessary challan copies
too... Kindly drop the notice....

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

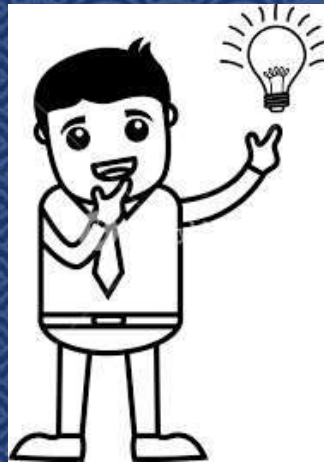
TAX PAYER: Thank God. Missed 15%, Escaped with 25%



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????



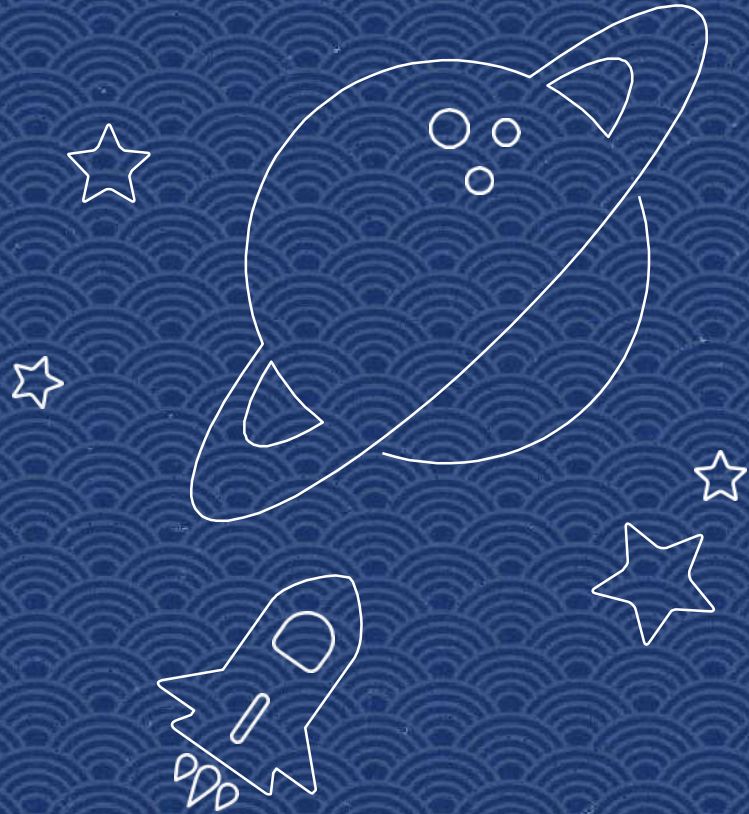
Quantum of Penalty - Quick Revision

Section 73: Without fraud or willful-misstatement or suppression of facts	
Situation	Penalty Amount
Before issuance of show cause notice	No penalty
Within 30 days after the issuance of the show cause notice	No penalty
After 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs. 10,000 whichever is higher

Section 74: With fraud or willful-misstatement or suppression of facts	
Situation	Penalty Amount
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of the show cause notice	25% of the tax amount
Within 30 days from the issuance of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)

SECTION 75

General Provisions relating to Determination
of Tax



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.

**Section
75(11)**

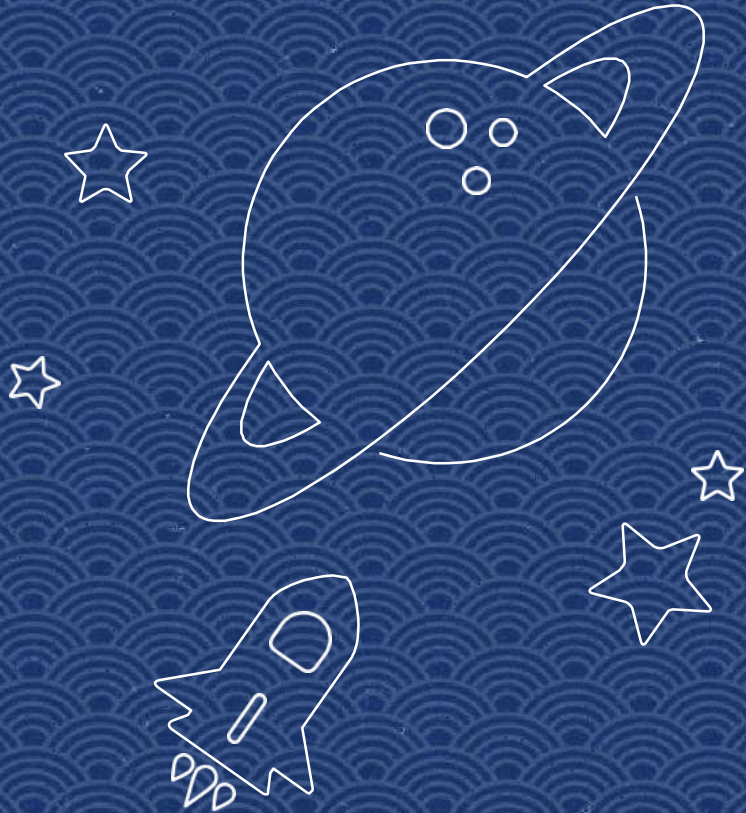
There is an issue Which is decided against the Revenue

(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 76

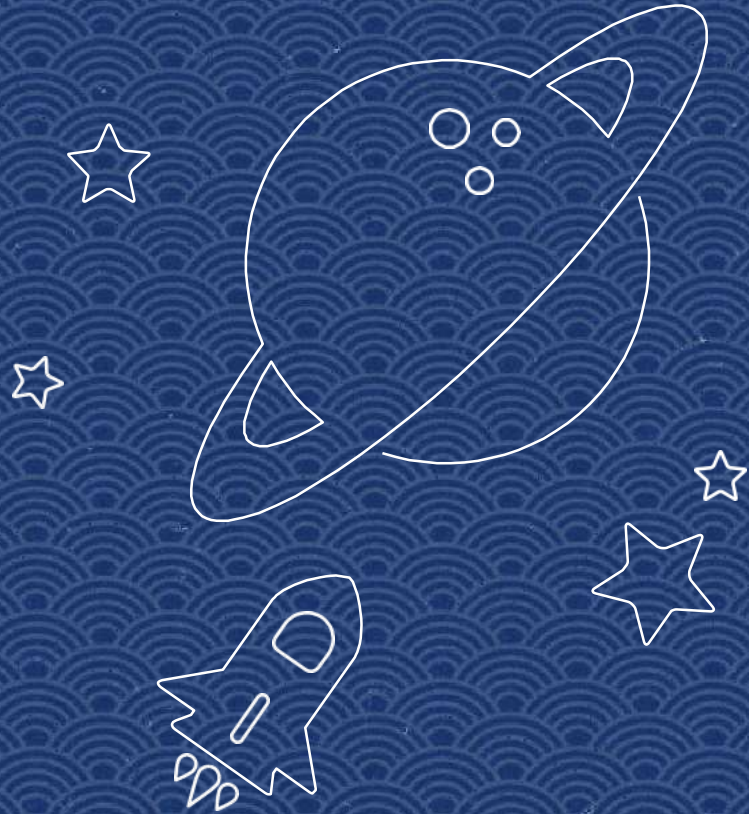
**Tax collected but not
paid to Government.**



- 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.**

Tax wrongfully collected and deposited with CG/SG - Revision

If a registered person has wrongly paid Central tax and State tax/ Union Territory tax on a transaction considered to be intra-state supply, which is **subsequently held to be inter-state**, shall be refunded the amount of taxes so paid.

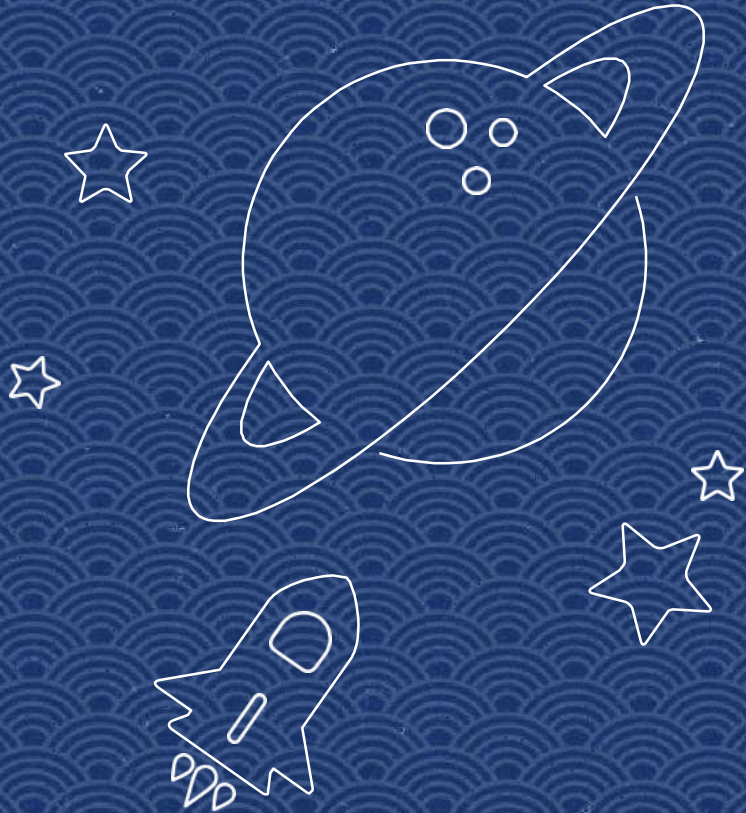
Registered person who has paid integrated tax on a transaction considered to be inter-State supply, which is **subsequently held to be an intra-State supply**, shall not be required to pay any interest on the amount of central tax and State tax/Union territory tax.

Inter-State Supply – Tax wrongly paid = CGST + SGST/UTGST instead of IGST
Then refund of IGST may be claimed

Intra-State Supply – Tax wrongly paid = IGST instead of CGST + SGST/UTGST
Then refund of CGST+SGST/UTGST may be claimed

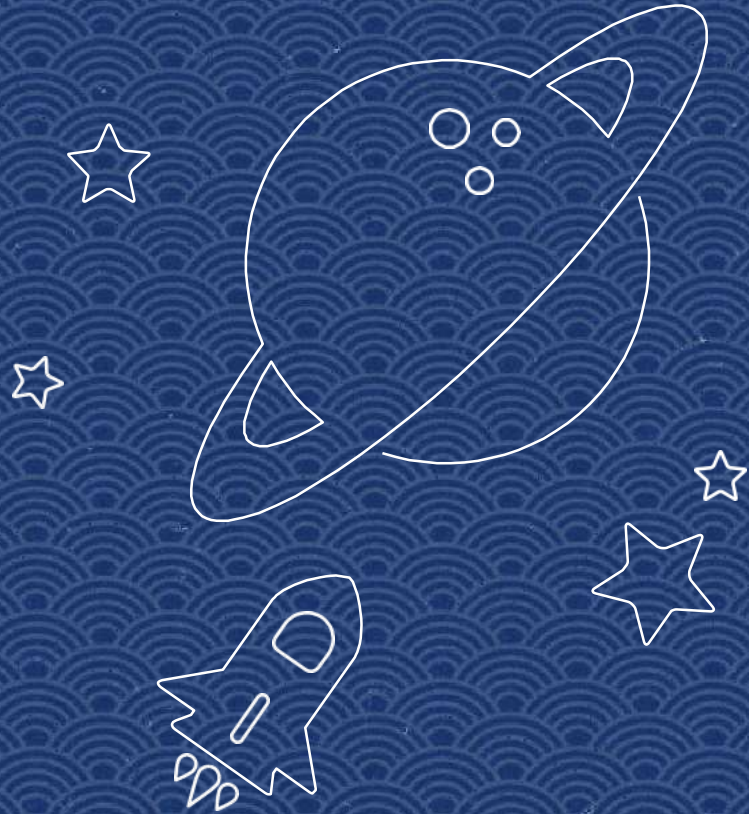
SECTION 78

**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).



SECTION 79

Recovery of Tax

R/w. Rule 143 to 157 of
CGST Rules.

All DRC Forms

SECTION 79 - Modes of Recovery

- a) Deducting from the amount due to the person.
- b) Detaining & Selling the goods of such person.
- c) Third party recovery viz., Debtors, Money holders
 - i) Everyone is bound by this notice whether it is Post Office, Bank, Insurance Co...
 - ii) No rules and regulations will be necessary.
 - iii) If not honoured, will be deemed to be a defaulter.

SECTION 79 – Modes of Recovery

- iv. The Officer is empowered to revoke, amend the notice or extend the time for making payment at any time.
- v. If the person disobeys the notice and makes payment directly to the person in default shall be personally liable to Government. [Amt Paid / Amt Due by him w.e.l]
- vi. If nothing is due to person in default, he should prove to the satisfaction of the officer.
- vii. Officer can seize movable or immovable property of the person in default. If within 30 days even if part amount is not paid, the asset can be disposed by the officer.
- viii. Inform collector to collect as if arrears of land revenue
- ix. Inform Magistrate to collect as if it was a fine.

SECTION 79 Contd....

- 2) Encashment of Bond / any Instrument executed
- 3) Any State / UT Officer is empowered to recover as if it was arrears of SGST/UTGST and remit to Government in such manner and proportion.

SECTION 80 – Payment in Installments

- Application to be filed by the tax payer
- Commissioner to give order in writing
- By Extending / Allowing time to pay any amount
- **OTHER THAN “Liability self assessed in any return”**
- Max 24 Monthly Instalments subject to interest payment.
- Even if one month defaulted, extension stops and recovery begins –NO NOTICE.

Thank you

