

Demand & Recovery of GST

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Demands and Recovery in GST

Theory of Demands and Recovery in GST

Filing an intimation of payment (FORM GST DRC-03)(Theory and Practical)

Applying for Deferred Payment/Payment in Instalments (FORM GST DRC-20)(Theory and Practical)

Filing reply to Form GST DRC-22 against proceedings initiated for recovery of taxes(Theory and Practical)

Theory of Prosecution and Compounding in GST (Theory and Practical)

Viewing Prosecution Notice Issued by Tax Officials(Theory and Practical)

Filing Application for Compounding of Offence (FORM GST CPD-01) and Taking Actions in the Subsequent Proceedings(Theory and Practical)

Sources of Demand Proceedings Initiated

Audit, Assessment & Investigation – Different powers

Assessment – Chapter XII

- Self Assessment (S. 59)
- Provisional Assessment (S. 60)
- Scrutiny of Returns (S. 61)
- Assessment of Non-filers of returns (S. 62)
- Assessment of unregistered persons (S. 63)
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Demands & Recovery – Chapter XV

- Adjudication of taxes – Matters not involving fraud etc. (S. 73)
- Adjudication of taxes – Matters involving fraud etc. (S. 74)

Scope of Section 73 & 74

Service of Show Cause Notice

- Where it appears to the Proper officer that,
 - ✓ Tax has not been paid or
 - ✓ Short paid or
 - ✓ Erroneously refunded, or
 - ✓ ITC has been wrongly availed or utilised

S. 73 – For any reason

S. 74 – By reason of:

- ✓ fraud, or
- ✓ any wilful-misstatement or
- ✓ suppression of facts to evade tax

- The expression “suppression” shall mean *non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.*

Explanation 2 of Section 74

Wilful Misstatement: Wilful misstatement implies that there is a statement but it does not convey the information in a true or fair manner and is likely to be misinterpreted by the person using such statement. A false statement becomes 'wilful' if it is deliberate or intentional. It is not wilful if the statement is accidental or inadvertent. A statement will not be misstatement only because full facts were not disclosed. Wilful means with intent to evade duty.

Fraud: The term fraud has not been defined in the Act. Basic element of fraud is deceit. Section 17 of the Contract Act states that fraud means making a suggestion, as a fact, which the person does not believe it to be true. Fraud also means active concealment of fact.

I. For the purposes of section 73 and section 74:

(i) the expression **“all proceedings in respect of the said notice”** shall not include proceedings under section 132. *Section 132 is in relation to prosecution. Thus, the person can be prosecuted under GST law even if no further demand can be raised for tax, interest or penalty. Prosecution in criminal court is independent of and can be in addition to, penalty imposed under GST law.*

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded. *Sometimes, if a notice is issued to a company, notice may be also issued to its executive director, employees, transporter etc. for same cause of action. These are termed as ‘co-noticees’, while company is the ‘main noticee’. Conclusion of proceedings against main noticee would be deemed to be conclusion of proceedings against all co-noticees also and the entire case will stand closed.*

Time-limit for issuance of Show Cause Notice & Order

Section 73 – Normal Cases

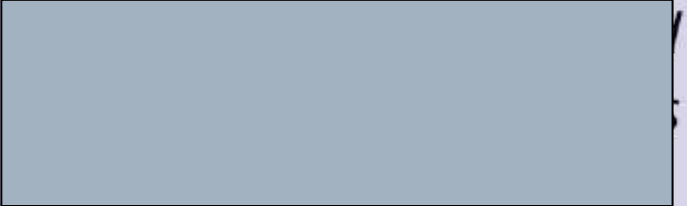

- Proper officer shall issue the notice **at least 3 months** prior to the time limit specified for issuance of order;
- Proper officer shall issue order within:
 - ✓ 3 years from the due date for furnishing of annual return for the financial year to which the tax relates;
or
 - ✓ 3 years from the date of erroneous refund.

Sec 74 – Cases involving fraud etc.

- Proper officer shall issue the notice **at least 6 months** prior to the time limit specified for issuance of order;
- Proper officer shall issue order within:
 - ✓ 5 years from the due date for furnishing of annual return for the financial year to which the tax relates;
or
 - ✓ 5 years from the date of erroneous refund.

Time Limit- Issue of SCN

S. No.	Nature of case	Time for issuance of notice	Time for issuance of order
1.	Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund

S. No.	Nature of case	Time for issuance of notice	Time for issuance of order
3.	Any amount collected as tax but not paid	No time limit	Within 1 year from the date of issue of notice 
4.	Non- payment of self-assessed tax	No need to issue a SCN	Recovery proceedings can be started directly [to 

Other key Points to be noted

- No time limit if any amount as representing the tax is collected but not paid - Sec 76 (1)
- *A show-cause notice issued a decade back should not be allowed to be adjudicated upon by the revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. Larger public interest requires that revenue should adjudicate the show-cause notice expeditiously and within a reasonable period – Parle International Limited 2020 (11) TMI 842 – (Bom HC)*
- No Time-limit provided in the law for replying to the show cause notice;
- Delay in filing reply can affect the upper limit for issuance of orders.

GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [SECTION 75]

- ❑ Period of stay order to be excluded in computing the limitation period [Sec-75(1)]
- ❑ In case charges of fraud /any wilful misstatement / suppression of facts are not established for a notice issued in a fraud case, penalty prescribed for non-fraud cases is payable [Sec-75(2A)]
- ❑ Adjudication order issued in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction be issued with 2 years [Sec-75(3)]
- ❑ Opportunity of being heard [Section 75(4)]
- ❑ Adjournment of hearing to grant time to person chargeable with tax [Section 75(5)]
- ❑ Adjudication order should be a speaking order [Sec- 75(6)]
- ❑ Tax, interest and penalty demanded in order not to exceed amount specified in notice [Sec- 75(7)]
- ❑ In case of modification of tax by the Appellate Authority/ Tribunal/ Court, penalty and interest to be modified accordingly [Section 75(8)]
- ❑ Payment of interest mandatory even if not specified in the adjudication order [Sec- 75(9)]
- ❑ Adjudication order to be passed mandatorily within stipulated time [Section 75(10)]
- ❑ In case of appeal filed by Department against prejudicial decision of the Appellate Authority/ Appellate Tribunal/ High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded [Section 75(11)]
- ❑ Amount of self-assessed tax or interest remaining unpaid to be recovered under section 79 [Sec-75(12)]
- ❑ In case of penalty being imposed under section 73/74 or 74A, no other penalty to be imposed for the same act / omission [Section 75(13)]

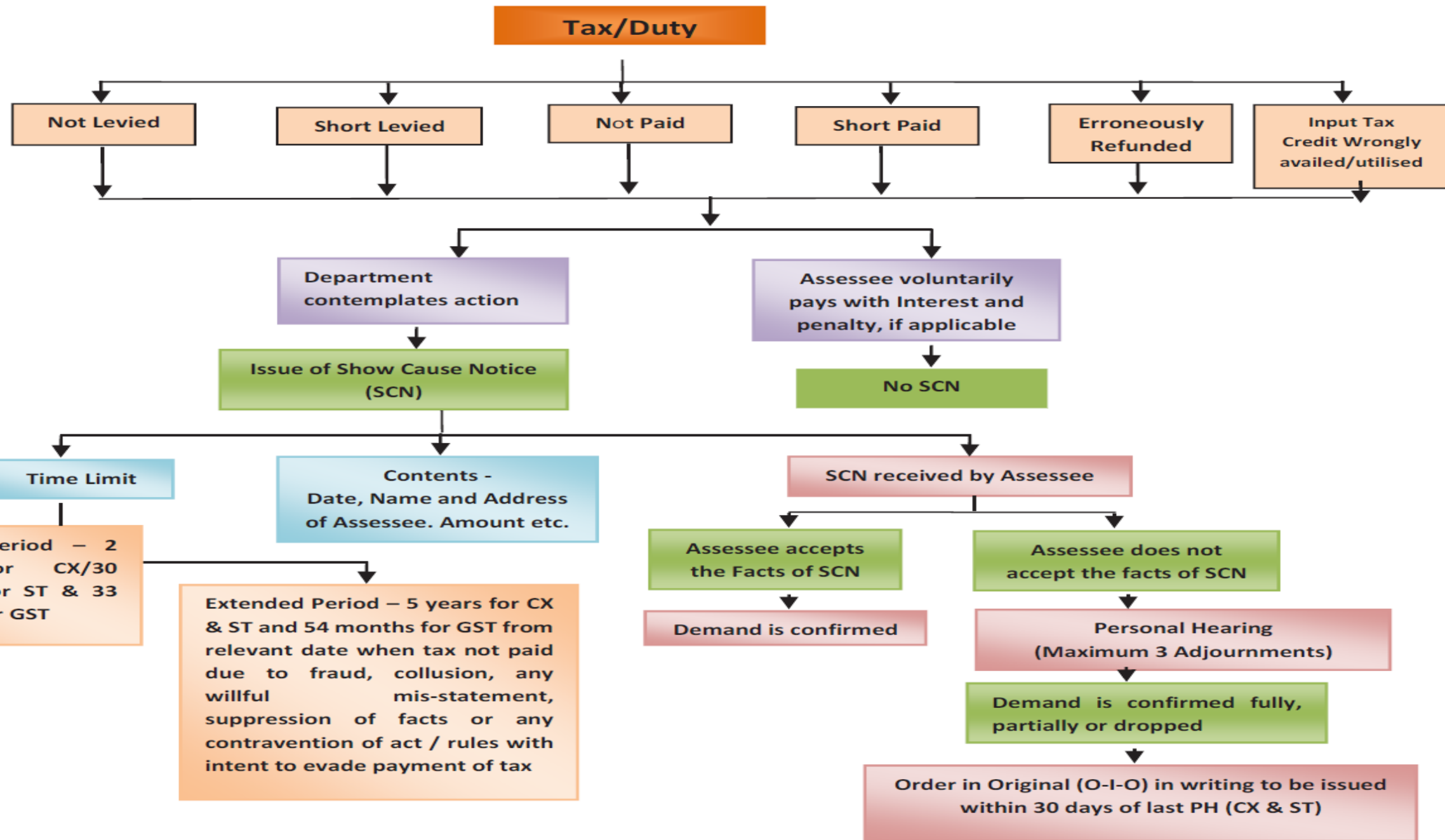
Deemed conclusion of adjudication

- The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74. [Sec. 75(10)] ***[Commissioner of Central Excise, Ahmedabad-I vs. M. Square Chemicals 2008 (231) ELT 194 (S.C.) - No demand can be made beyond 5 years.]***

Monetary Limit of SCN

CGST Officer	Monetary limit of CGST	Monetary limit of IGST	Monetary limit of CGST and IGST
Superintendent of Central Tax	Not exceeding ₹ 10 lakh	Not exceeding ₹ 20 lakh	Not exceeding ₹ 20 lakh
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakh and not exceeding ₹ 1 crore	Above ₹ 20 lakh and not exceeding ₹ 2 crores	Above ₹ 20 lakh and not exceeding ₹ 2 crores
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

SCN and Adjudication Process



Procedures – SCN u/s 73 & Section 74

- (i) Determination of applicability of section 73 or 74:** First, it is to be determined by the Proper Office in his opinion whether the tax not/ short paid etc. is for reason by fraud, wilful misstatement, suppression of fact u/s 74 OR for reason by fraud, wilful misstatement, suppression of fact u/s 73.
- (ii) Proceed with section 73 or 74:** If answer to question number 1 is affirmative, the Proper Officer shall proceed under Section 74 of the CGST Act, 2017, else under Sec 73 of this Act.
- (iii) Pre-SCN intimation to the defaulting taxable person to reduce litigation.** The Proper Officer shall ascertain and compute the details of tax, interest and penalty payable and also communicate the same to the defaulting tax payer, **in Part A of Form GST DRC-01A. [Rule 142(1A) of the CGST Rules, 2017].**
- (iv)** A taxpayer, on receipt of intimation in **FORM DRC-01A**, may use the second part of the said form i.e. **Part B**, to communicate to the officer, if he (taxable person) has made whole or part payment of the ascertained liability, or if the liability is not acceptable by him.

Procedures – SCN u/s 73 & Section 74

- (v) In case the taxable person pays the full amount with interest under section 50 and a penalty equal to 15% of tax and informs the Proper Officer, the **proceedings under Section 74(1)** or pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax **proceeding u/s 73(1) shall stand concluded and there would be no need for issue of SCN.**
- (vi) When the amount paid as per the ascertainment of the assessee falls short, the proper officer shall issue a SCN for the amount of shortfall under Section 73 (1) or 74(1) of the CGST Act, 2017 as the case may be. **However, the provision of pre-notice is optional e.f. 15-10-2020 and not mandatory.**

Procedures – SCN u/s 73 & Section 74

(vii) Thereafter, the Proper officer

- (a) shall issue a notice under section 74(1) in the following situation involving payment of tax has arisen in cases of fraud, wilful misstatement or suppression of facts – Tax not paid; or Tax short paid; or Tax erroneously refunded; or Input tax credit wrongly availed or utilized **OR**
- (b) shall issue a notice under section 73(1) in the following situation involving payment of tax has arisen in cases of other than fraud, wilful misstatement or suppression of facts – Tax not paid; or Tax short paid; or Tax erroneously refunded; or Input tax credit wrongly availed or utilized

Procedures – SCN u/s 73 & Section 74

(viii) Issue of GST DRC -01:

Notice under section 73 (1) or 74(1) of the CGST Act, 2017 **shall be in Form GST DRC-01 [Rule 142(1)(a) of CGST Rules, 2017].**

Section 73 of the CGST Act, 2017 also applies for recovery of interest payable which is not paid or partly paid or interest erroneously refunded. Interest cannot be demanded by issuing notice u/s 50

Form GST DRC-01 notice is required to be served with notice issued under section 52, 73, 74, 76, 122,123,124,125,127,129 or 130 of CGST Act, 2017.

Demand of interest, notice should be issued under GST DRC-07, as per rule 142(5) of CGST Rules, 2107 -Rajkamal Builder Infrastructure v. UOI (2021) 127 taxman.com 150 (Guj HC).

Procedures – SCN u/s 73 & Section 74

(ix) Issue of GST DRC -02:

Proper office may issue a statement u/s 74(3) of the CGST Act, 2017 in lieu of SCN for tax periods other than covered in earlier SCN, in **Form GST DRC-02 [Rule 142(1)(b) of CGST Rules, 2017]**.

The service of such statement shall be deemed to be service of SCN u/s 73 (1) except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under section 74(1) are the same as are mentioned in the earlier notice.

Procedures – SCN u/s 73 & Section 74

(x) Issue of GST DRC- 05:

- (a) Where the tax payer makes the payment of tax along with interest within 30 days of issuance of SCN and intimates the proper officer of such payment in **FORM GST DRC-03**, the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice and subsequently no penalty shall be payable. *[Sub-section 8 of Section 73 & Rule 142(3)].*

- (a) Where the tax payer makes the payment of tax along with interest and a penalty equal to 25% of tax within 30 days of issuance of SCN and intimates the proper officer of such payment in **FORM GST DRC-03**, the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice and subsequently no penalty shall be payable. *[Sub-section 8 of Section 74 & Rule 142(3)].*

Procedures – SCN u/s 73 & Section 74

(ix) Order in Form GST DERC- 06:

Where the person files a reply or representation, the proper officer after considering the representation, shall issue an **order in FORM GST DRC-06**, consisting of the amount of tax, interest and penalty **[Sub- section 9 of Section 74 & Rule 142(4)] OR [Sub-section 9 of Section 73 & Rule 142(4)] as the case may be.**

- SCN can only be issued electronically on the common portal - Shri Shyam Baba Edible Oils Vs CCE (MP High Court) 2020-TIOL-2016-HC-MP-GST
 - *It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded - This principle becomes all the more stringent when statutorily prescribed.*

Procedures – SCN u/s 73 & Section 74

(x) FORM GST DCRC – 07:

- A summary of such order shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.**
- Such summary of order in FORM GST DRC-07 shall be treated as a notice for recovery. *[Rule 142(5) & (6)].***

(xi) Time Limit for issue of SCN and Time limit for issue of the determination order:
Ref Section 73(10) and section 74(10) f CGST Act, 2017.

Comparative summary of the penalty payable u/s 73 & 74 of the CGST Act, 2017.

Sr. no	Stage of payment	Section 73	Section 74
1	Tax and interest paid before issue of SCN	No penalty	Penalty equal to 15% of amount
2	Tax and interest paid within 30 days after issue of SCN	No penalty	Penalty equal to 25% of amount
3	Tax and interest paid within 30 days of communication of adjudication order	Penalty equal to 10% of tax amount or Rs, 10,000 whichever is higher	Penalty equal to 50% of amount
4	Maximum Penalty: in any other case	Penalty equal to 10% of tax amount or Rs.10,000 whichever is higher	Penalty equal to 100% of the amount

Seizure and confiscation of goods and conveyances in transit (under section 129 and 130 of CGST Act, 2017) is a separate proceeding from the recovery of tax [Explanation (1)(ii) to section 74 of the CGST Act, 2017].

[Notification No. 39/2021-Central Tax, dated 21.12.2021 effective from 01.01.2022](#)

and by virtue of the above amendment, there will be 'separate recovery proceedings' for the following two sections: Section 129 – Detention seizure and release of goods and conveyance in transit Section 130 – Confiscation of goods or conveyance and levy of penalty.

Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded u/s 73 (Determination of tax when no fraud or suppression) or u/s 74 (Determination of tax when there is fraud or suppression), the proceedings against all the persons liable to pay penalty under section 122 (penalty for certain offences) and 125.

<p>Section 74A (Applicable from FY 2024-25 onwards)</p>	<p>Demand and recovery in fraud and non-fraud cases</p>
<p>Power to serve show cause notice (SCN)</p>	<p>Proper Officer (PO) shall serve the SCN to a person chargeable with tax in case of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilized. No SCN to be issued if the amount involved is less than ₹ 1,000.</p>
<p>Time limit for issuance of notice</p>	<p>42 months from the (i) due date of furnishing annual return of the FY, to which such non-payment/short payment of tax or ITC wrongly availed/utilized relates or (ii) date of erroneous refund</p>
<p>Issuance of statement for subsequent periods</p>	<p>PO may serve a statement containing details of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilized, for subsequent periods other than covered under the original notice.</p>
<p>Deemed SCN if grounds for issuing statement are same as in case of SCN</p>	<p>Such statement shall be deemed to be the SCN but grounds for discrepancies in statement must be the same as those in original SCN</p>

Section 74A (Applicable from FY 2024-25 onwards)	Demand and recovery in fraud and non-fraud cases		
Penalty	Non Fraud Cases		Fraud Cases
	10% of the tax due or ₹ 10,000 ⁰ whichever is higher	Equivalent to the tax due	
	In case where	Penalty in Non Fraud Cases	Penalty in Fraud Cases
	Tax and Interest paid before SCN	NIL	15% of Tax Due
	Tax and Interest paid within 60 days of SCN	NIL	25% of Tax Due
	Tax and Interest paid within 60 days of communication of order		50% of Tax Due

Section 74A (Applicable from FY 2024-25 onwards)	Demand and recovery in fraud and non-fraud cases
Issue of order	PO shall determine the tax, interest and penalty after considering representation made by person chargeable with tax and issue an order.
Time Limit for issuance of order	<ul style="list-style-type: none"> • 12 months from the date of issue of SCN • Extension upto 6 months permitted
Penalty in case of Self Assessed Tax or amount collected as tax	If in non-fraud cases, self-assessed tax or amount collected as tax is not paid within 30 days from the due date, penalty shall be levied as follows: 10% of the tax due or ₹ 10,000 ¹⁰ , whichever is higher.

Recovery of GST demanded

- The proper officer shall communicate the details of the determined tax, interest, and penalty in Part A of Form GST DRC-01A
- The proper officer shall serve the show cause notice under form GST DRC-01
- Reply to the SCN shall be furnished by the taxable person under GST DRC-06
- The Order shall be passed by the proper officer under GST DRC-07
- The Taxable Person shall make the payment of the demand amount or any other payment voluntarily by using form GST DRC-03 by giving the details of the same.
- On receipt of payment the proper officer shall serve and acknowledge the payment through form GST DRC-04 accordingly.

Recovery of Demand

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- **Initiation of recovery proceedings [Section 78]**
 - ❖ Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid by such person within a period of **3 months** from the date of service of such order. If a taxable person fails to do so, recovery proceedings are initiated against him.
 - ❖ However, 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 3 months** as may be specified by him

- **S.79 Recovery of tax:**
 - ❖ (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

Section 79 of CGST Act, 2017 - *Modes of recovery*

- ❑ Deduction out of money owed to the defaulter
 - ❑ Detaining and selling the goods belonging to defaulter
 - ❑ Recovery from any other person who owes money to the defaulter
 - ❑ Collection by detention of any movable or immovable property belonging to defaulter
 - ❑ Recovery through district collector
 - ❑ Recovery through magistrate
 - ❑ Recovery through execution of bond or instrument
- ❑ *(a) Recovery by deducting from any money owed:*
 - ❖ *The proper officer may deduct the amount so payable from any money owing*
 - ❖ *to such person which may be under the control of the proper officer*
 - ❖ *☒ The proper officer shall issue Form GST DRC-09 [Order for Recovery]*

Section 79 of CGST Act, 2017 -Modes of recovery

- ***(b) Recovery by sale of goods under the control of proper officer:***
 - ❖ ***Sale will be by auction including e-auction by issuing a notice in Form GST DRC-10***
 - ❖ ***Perishable or hazardous goods can be auctioned immediately, but in other cases a 15 days' notice is required.***
 - ❖ ***Successful bidder will be informed in Form GST DRC-11 requiring him to make the payment within a period of 15 days from date of auction.***
 - ❖ ***On payment of full bid amount, proper officer shall transfer possession of said goods by issuing a certificate in Form GST DRC-12***
- **In case the defaulter pays the amount under recovery, including any expenses incurred on process of recovery, before the issue of notice issued in [FORM GST DRC-10](#) (Notice of Auction) then the proper officer shall cancel the process of auction and release the goods.**

Section 79 of CGST Act, 2017 -Modes of recovery

- **(c) Recovery from a third person:**
 - ❖ (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
 - (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 passbook, 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;
 - (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
- **Practical:** Recovery of defaulted money can be undertaken from such third person by issuing him a notice in Form GST DRC-13 directing him to deposit the amount specified in the notice.
- **On payment by such person, the proper officer shall issue a certificate in Form GST DRC-14 indicating the details of the liability so discharged.**

Section 79 of CGST Act, 2017 -Modes of recovery

□ *(d) Recovery by sale of movable or immovable property*

- ❖ *The proper officer may, in accordance with the rules to be made in this behalf, distrain (seizure of property) any movable or immovable property belonging to or under the control of such person*
- ❖ *Detain the same until the amount payable is paid →*
- ❖ *If any amount remains unpaid for a period of 30 days next after any such distress, the proper officer may sell the property.*
- ❖ *If any surplus arises, he may refund to the tax payer Practical*
- ❖ *The Proper Officer shall issue a notice for attachment in form GST DRC-16*

- *Subsequently, the proper officer will serve Notice for Auction of Immovable / Movable Property under section 79(1) in Form GST DRC-17*

Section 79 of CGST Act, 2017 -Modes of recovery

□ (e) Recovery through land revenue authority:

- ❖ ☒ 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
- ❖ ☒ The proper officer shall issue GST DRC-18 to the District Collector for recovery of the demand amount.

□ (f) Recovery through court:

- ❖ 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.
- ❖ The proper officer shall issue GST DRC-19 in the form of Application to the Magistrate for Recovery as Fine.

Applying for Deferred Payment / Payment in instalments (Form GST DRC-20) Section 80:

- Payment of tax and other amount 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 24,
- 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.

How to File an Application for Deferred Payment / Payment in Instalments through Form GST DRC-20

- ❑ **FORM GST DRC- 20 is an application filed electronically by the tax payer**
- ❖ such application shall be filed electronically by taxable person for
- ❖ seeking an extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80,
- ❖ the commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- ❖ upon consideration of the request of the taxable person and the report of the jurisdictional officer, /-
- ❖ the Commissioner may issue an order in **FORM GST DRC- 21** allowing the taxable person further time to make payment and / or to pay the amount in such monthly instalments, not exceeding twenty-four, as he may deem fit.
- ❖ **The Instalment facility shall not be available to:**
 - the taxable person has already defaulted on the payment of any amount under GST Acts for which the recovery process is on;
 - the taxable person has not been allowed to make payment in instalments in the preceding financial year under GST Act
 - the amount for which instalment facility is sought is less than Rs 25,000

Form No.	Description
FORM GST DRC - 01	Summary of Show Cause Notice
FORM GST DRC - 01A	Intimation of tax ascertained as being payable under section 73(5)/74(5)
FORM GST DRC - 02	Summary of Statement
FORM GST DRC - 03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement or intimation of tax ascertained through FORM GST DRC-01A.
FORM GST DRC - 04	Acknowledgement of acceptance of payment made voluntarily
FORM GST DRC - 05	Intimation of conclusion of proceedings
FORM GST DRC - 06	Reply to the Show Cause Notice
FORM GST DRC - 07	Summary of the order
FORM GST DRC - 07A	Summary of the order creating demand under existing laws
FORM GST DRC - 08	Summary of Rectification /Withdrawal Order
FORM GST DRC - 08A	Amendment/Modification of summary of the order creating demand under existing laws
FORM GST DRC - 09	Order for recovery through specified officer under section 79
FORM GST DRC - 10	Notice for Auction under section 79 (1) (b) or section 129(6) of the Act
FORM GST DRC - 11	Notice to successful bidder
FORM GST DRC - 12	Sale Certificate
FORM GST DRC - 13	Notice to a third person under section 79(1) (c)

Form No.	Description
FORM GST DRC - 14	Certificate of Payment to a Third Person
FORM GST DRC - 15	APPLICATION BEFORE THE CIVIL COURT REQUESTING EXECUTION FOR A DECREE
FORM GST DRC - 16	Notice for attachment and sale of immovable/movable goods/shares under section 79
FORM GST DRC - 17	Notice for Auction of Immovable/Movable Property under section 79(1) (d)
FORM GST DRC - 18	Certificate action under clause (e) of sub-section (1) section 79
FORM GST DRC - 19	Application to the Magistrate for Recovery as Fine
FORM GST DRC - 20	Application for Deferred Payment/ Payment in Instalments
FORM GST DRC - 21	Order for acceptance/rejection of application for deferred payment / payment in instalments
FORM GST DRC - 22	Provisional attachment of property under section83
FORM GST DRC - 23	Restoration of provisionally attached property / bank account under section83
FORM GST DRC - 24	Intimation to Liquidator for recovery of amount
FORM GST DRC - 25	Continuation of Recovery Proceedings
FORM GST DRC - 22A	Application for filing objection against provisional attachment of property
FORM GST DRC-01B	Intimation of difference in liability reported in statement of outward supplies and that reported in return
FORM GST DRC-03A	Application for adjustment of the amount paid through FORM GST DRC-03 against the order of demand

Provisional attachment to protect revenue in certain cases – Section 83

- ❑ (i) This section applies only during the pendency of any proceedings under
 - ❑ (ii) The provisional attachment of property of taxable person can be undertaken by the Commissioner;
 - ❑ (iii) The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Govt. revenue it is necessary to provisionally attachment the property;
 - ❑ (iv) Such provisional attachment is be valid for one year from the date of the order made by Commissioner.
- ❖ **Section 62** Assessment of non-filers of returns
 - ❖ **Section 63** Assessment of unregistered persons
 - ❖ **Section 64** Summary assessment in certain special cases
 - ❖ **Section 67** Power of inspection, search and seizure
 - ❖ **Section 73** Determination of tax not paid or short paid or erroneously refunded other then fraud
 - ❖ **Section 74** Determination of tax not paid or short paid or erroneously refunded in case of fraud

Provisional attachment to protect revenue in certain cases – Section 83

- (i) This section applies only during the pendency of any proceedings under
- (ii) The provisional attachment of property of taxable person can be undertaken by the Commissioner;
- (iii) The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Govt. revenue it is necessary to provisionally attachment the property;
- (iv) Such provisional attachment is be valid for one year from the date of the order made by Commissioner.

- Section 62 Assessment of non-filers of returns
- Section 63 Assessment of unregistered persons
- Section 64 Summary assessment in certain special cases
- Section 67 Power of inspection, search and seizure
- Section 73 Determination of tax not paid or short paid or erroneously refunded other than fraud
- Section 74 Determination of tax not paid or short paid or erroneously refunded in case of fraud
- This section deals with continuation of proceedings, where a notice is already served for recovery of government dues upon a taxable person and upon any appeal revision

Prosecution under GST Laws

Prosecution – Sec 134, 135, 136 & 137

COGNIZANCE OF OFFENCES [Sec 134]

- Courts inferior than Magistrate of the First Class shall not declare the judgment for any offence committed under this act .

PRESUMPTION OF CULPABLE MENTAL STATE [Sec 135]

- Any offence under this act will be **presumed to be done in a culpable mental state** by the court.
- However, the accused can defend himself by proving the fact he was not in such mental state.
- A fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a **preponderance of probability**.

Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137

RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [Sec 136]

A statement signed by a person during the course of proceeding is relevant for proving

the truth of the facts in any prosecution for an offence under this act.

- When the person who made the statement is :
 - Dead or cannot be found
 - Incapable of providing evidences
 - Restricted by the adverse party
 - Presence of the person requires time or expenses involved for presenting the person,
is considered unreasonable by the court .
- When the person who made the statement is considered as a witness by the court , the statement should be produced as a evidence in interest of the justice.

Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137

OFFENCES BY COMPANIES [SEC 137]

- **Offence committed by a company**
 - Every person who at the time of offence being committed was responsible for the conduct of the business of the company shall be deemed to be guilty .
 - Proceedings shall be conducted accordingly.
 - If proved that the offence was committed with the consent of the key managerial persons or negligence on their part , they shall also be deemed to be guilty.
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Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137

- **Offence by Partnership Firm or LLP or a HUF or a Trust**
 - The partners or karta or the managing trustee shall be deemed to guilty for offence committed under this act.
 - If proved the offence was committed without their knowledge or measures were exercised to stop such offence then they shall not be held liable
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Q&A

