

Goods & Service Tax

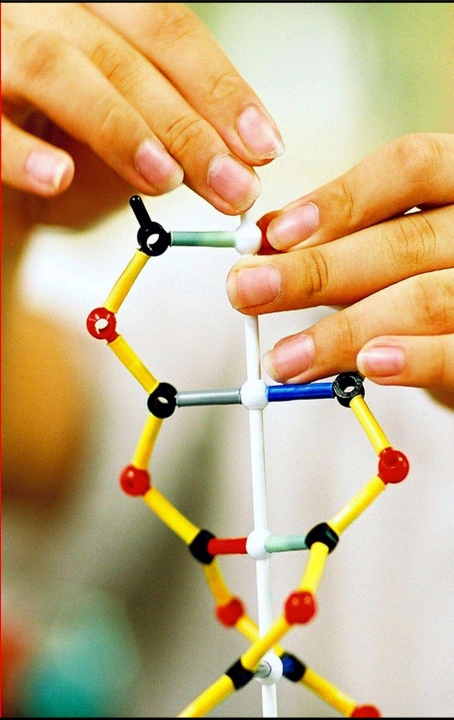
Assessment / Audit / Demands

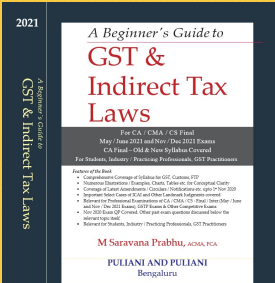
M Saravana Prabhu,

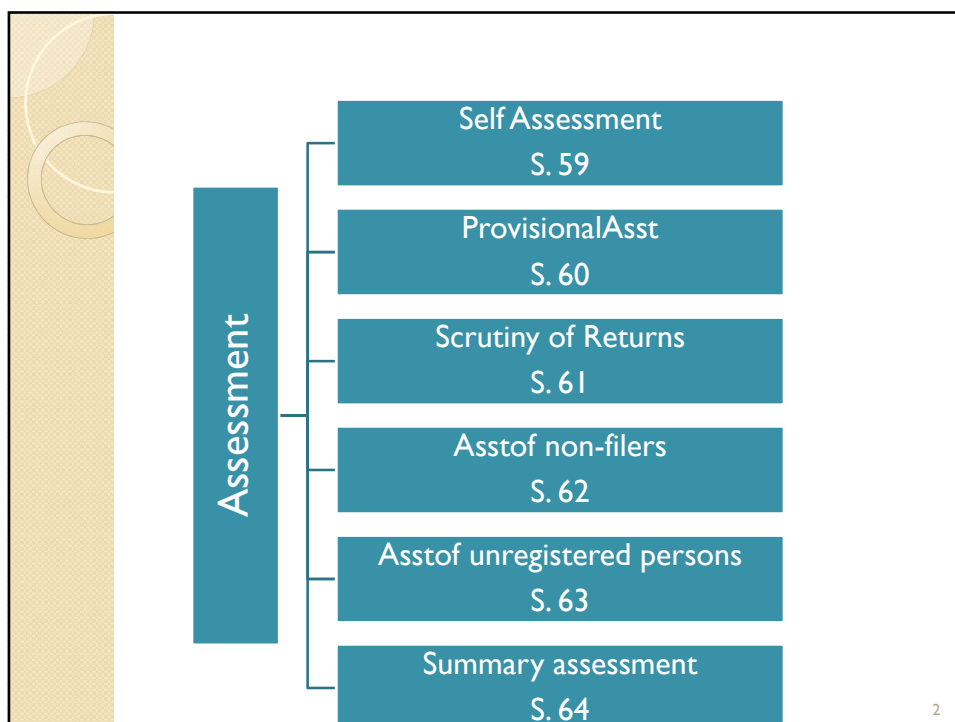
ACMA, FCA

Ph: 94453 81071 | 97899 76078
msaravanaprabhu@outlook.com

To order book -
visit
tinyurl.com/GSTBook21





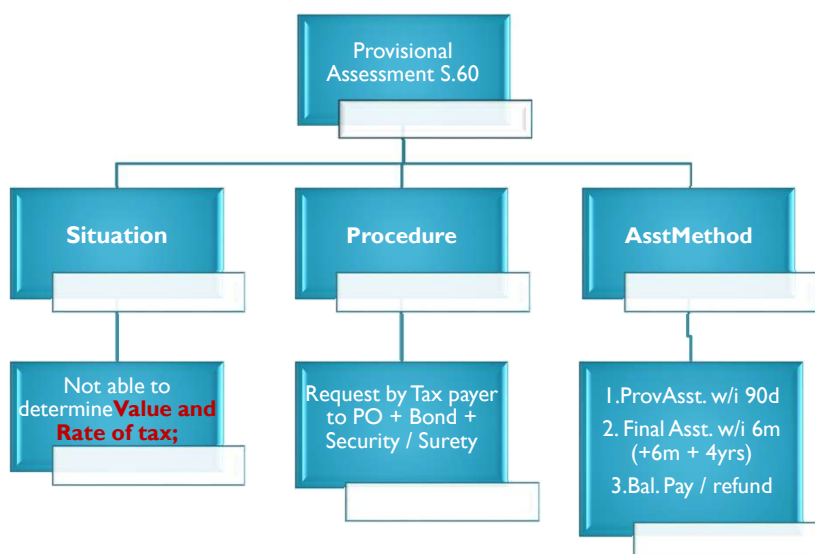


Self Assessment S.59

- Every Registered taxable person;
- Himself assesses the tax payable;
- Furnish the return for each tax period.

3

Provisional Assessment S.60



Prov.Asst. Rules

Form	Purpose
ASMT 1	Application for Provisional Assessment
ASMT 2	Notice by PO for Seeking Additional Information / Clarification / Documents for Prov.Assessment
ASMT 3	Reply to Notice
ASMT 4	Order for Provisional Assessment
ASMT 5	Furnishing of Security / Bond
ASMT 6	Notice for seeking additional information / clarification / documents for final assessment
ASMT 7	Final Assessment Order
ASMT 8	Application for Withdrawal of Security
ASMT 9	Order for release of security or rejecting the application to be passed w/l 7 days

Scrutiny of Returns S. 61

- Scrutinize the return to verify the correctness;
- **Discrepancy noticed** intimated in ASMT 10;

Expln w/i 30 days to be submitted
by Tax Payer in ASMT 11

Acceptable
explanation

Unsatisfactory explanation

Order Passed in
GST ASMT 12
No further
action required;

Appropriate action will be
initiated 65 / 66 / 67
(Audit / Special Audit /
Inspection), or u/s 73 or
74 (Demand etc.)

6

Best Judgement Assessment – Sec 62

- A.k.a. Assessment for **Non-filers of Returns;**

Registered taxable person fails to file returns and Notice Given by PO

Fails to file returns
+

Fails to respond to notice

Assessed by PO **based on the information available to the best of his judgment** w/i 5 years from due date of Annual Return;

On filing of return w/i 30 days, BJA withdrawn; However interest and late fees payable as applicable

Ex: If a person defaults for a tax period falling in F/Y 2018-19, BJA to be made before 31.12.2024

7

Asst. of Unregistered Person – Sec 63

URD liable to Pay Tax

Fails to take registration

Registration cancelled by PO but liable to pay tax

Assess to the best of his judgment;

Serving of SCN [GST ASMT 14] + **opportunity**

Assessed by PO based on the information available to the best of his judgment **w/i 5 years from due date of annual return;** [Order ASMT 15]

Multiple Units

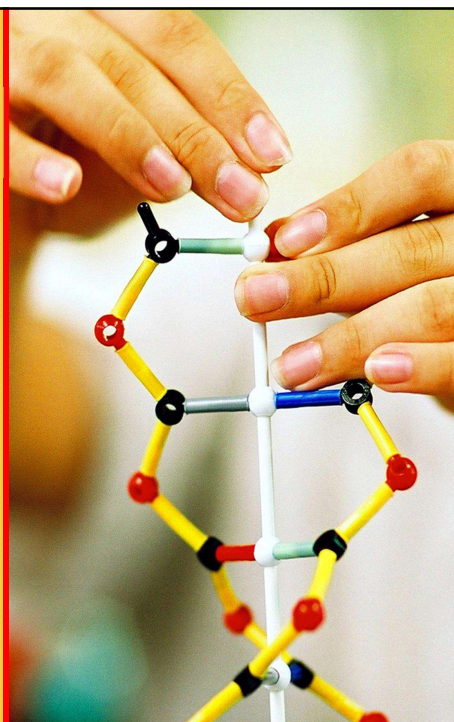
8

Summary Assessment [S. 64]

- **Evidence / Grounds to believe** that delay may adversely effect the revenue;
- With **prior permission (AC/ JC)**.
- If person not ascertainable liability on Transporter
- Order in Form GST ASMT 16
- If the order is erroneous; Addl./Joint Commissioner may withdraw such order [GST ASMT 18 – R.100]
- Application filed [GST ASMT 17] or on his own motion Addl. / Joint Commissioner;

9

Audit under GST



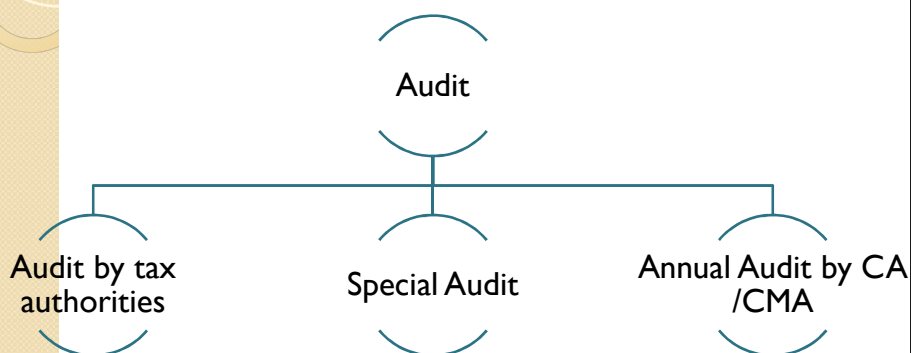
Audit [Sec 2(14)]

“Audit” means

- The **examination of records, returns and other documents** maintained or furnished by the registered person under this Act or rules made thereunder or under any other law for the time being in force to verify;
- the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed; and
- **to assess his compliance with the provisions of this Act or the rules made thereunder.**

11

Audit



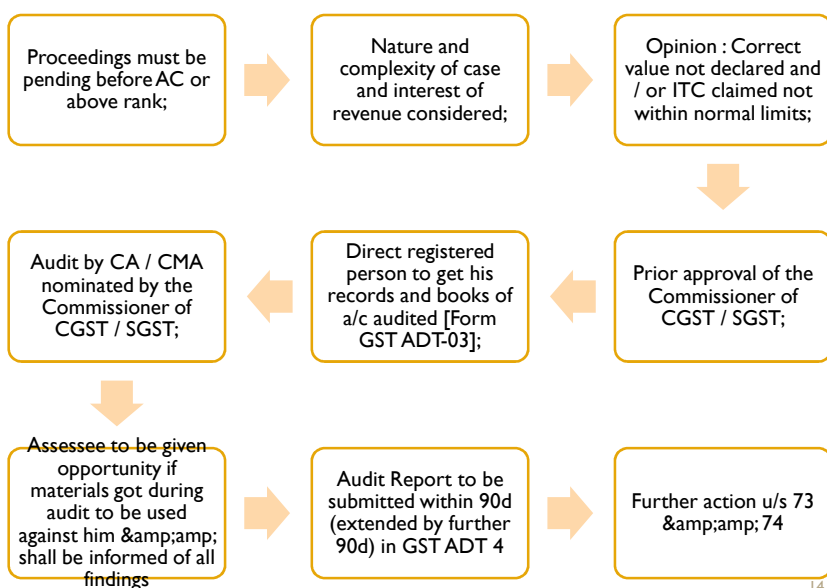
12

Audit by Tax Authorities [Sec. 65]

- Commissioner of CGST / SGST or authorized officer;
- Audit shall be for a **financial year or multiples thereof**
- At the place of business of registered person / in their office;
- Notice to registered person at least **15 working days** prior to audit **[Form GST ADT-01]**;
- Audit to be completed within **3 months** from **Date of Commencement of Audit** (extended further by 6m by Comm.);
- Registered person to provide the required information and facility;
- Result of audit to be **intimated within 30 days** [Form GST ADT-02] and after opportunity further action may be taken u/s 73 and 74

13

Special Audit [Sec 66]



14

Special Audit [Sec 66]

- Spl Audit even if audit conducted under any other law
- Expenses of audit including remuneration to be determined and paid by the Commissioner.

15

Audit by CA / CMA [Sec. 35(5) and R.80]

- Every registered person whose turnover during a financial year exceeds the prescribed limit (**presently Rs.2 Crore**) shall get his accounts audited by a CA or CMA
- He shall submit –
 - (a) Annual Return u/s 44
 - (b) Audited Annual Accounts along with a reconciliation statement reconciling the value of supplies declared in return with Audited FS
 - (c) and such other particulars as may be prescribed.
- The Audit Report with the Audited Annual Accounts to be submitted along with Annual Return on or before 31st December following the end of financial year in Form GST ADT 9C.
- The contents of the **audit report and other particulars are to be prescribed**

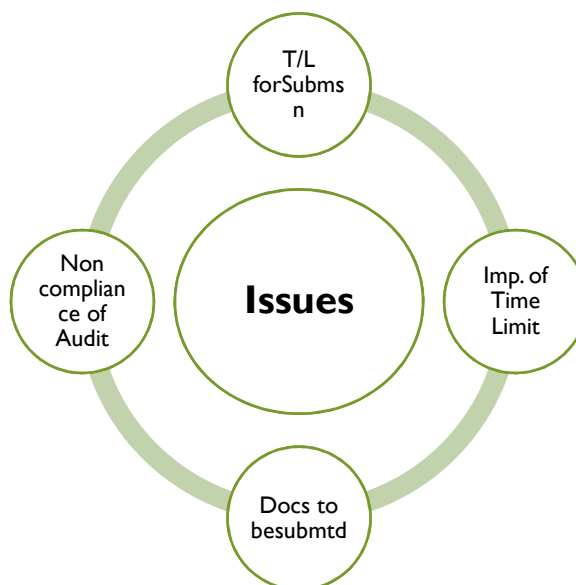
16

Audit by CA / CMA [Sec. 35(5) and R.80]

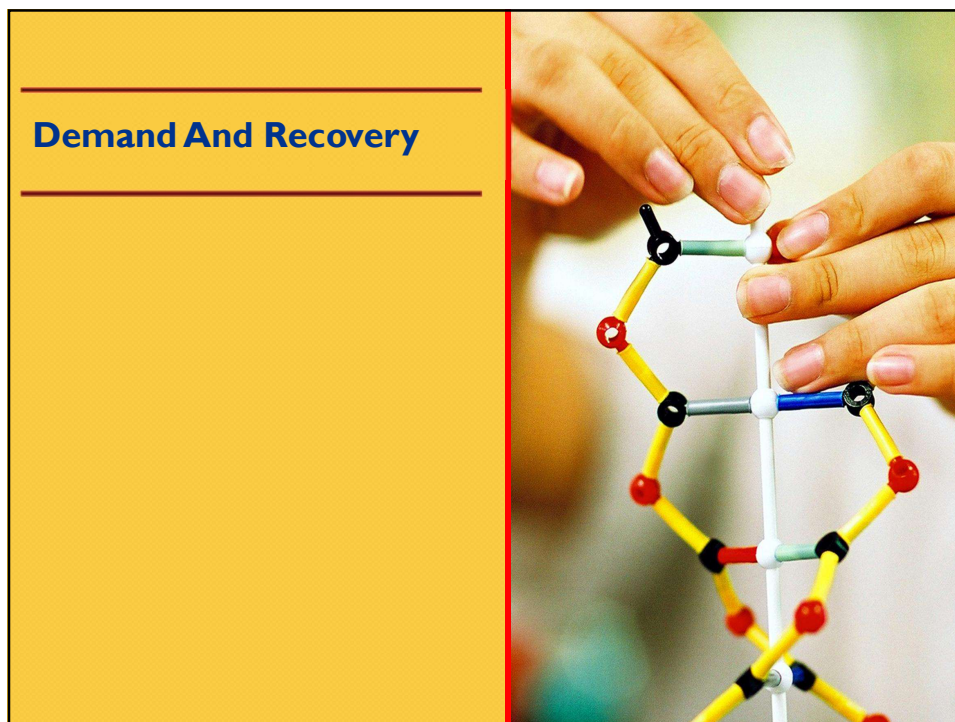


17

Audit by CA / CMA [Sec. 35(5) and R.80]



18



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

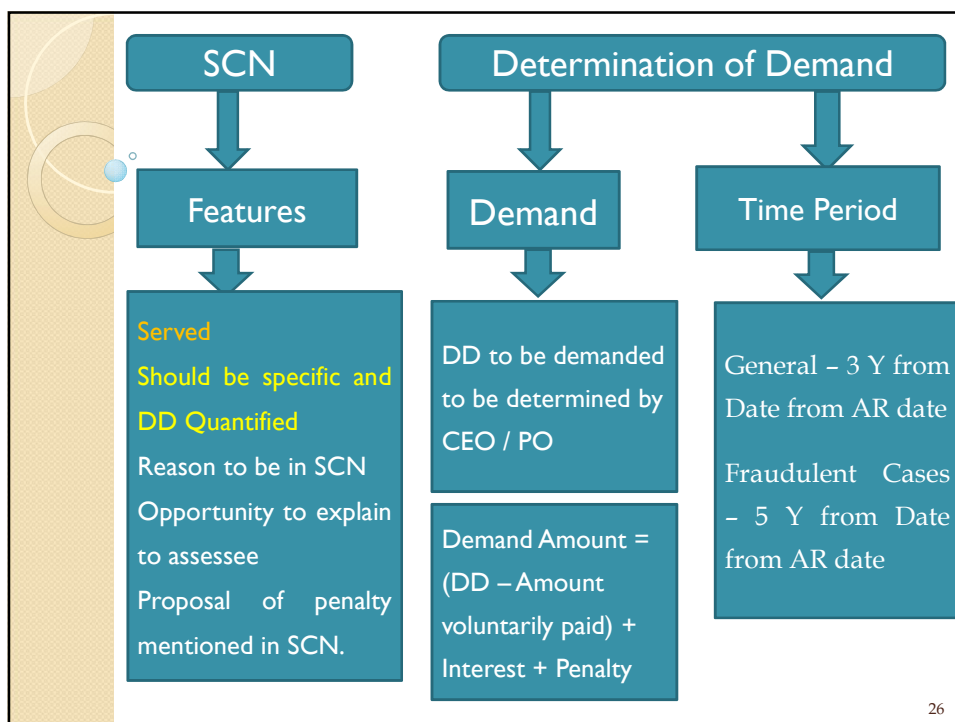
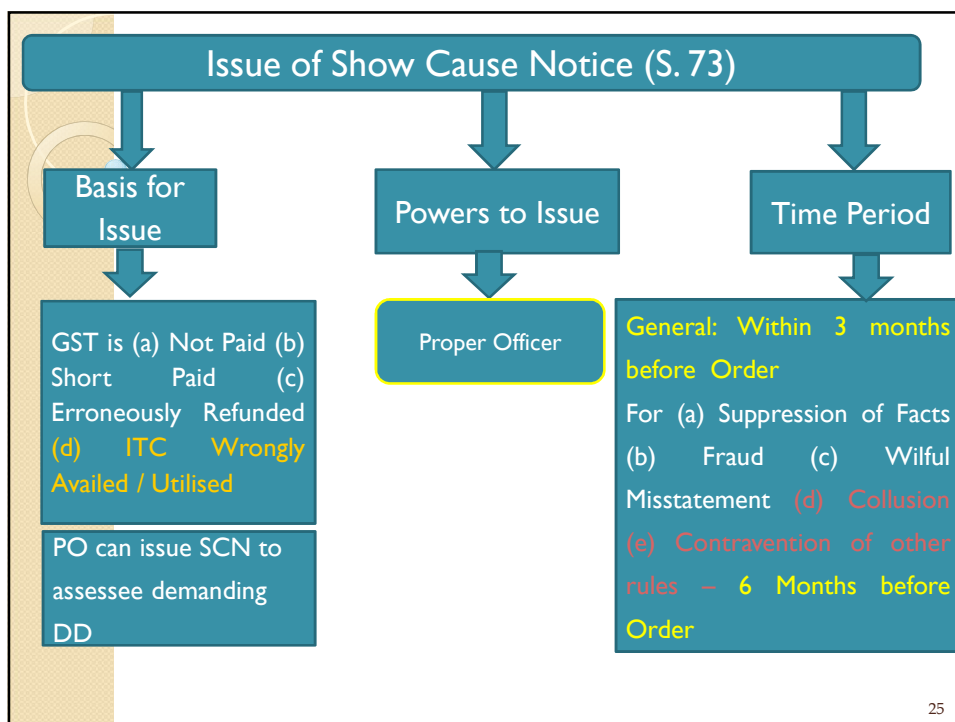
Tax/Interest – Paid within 30 days of SCN – 25% PENALTY

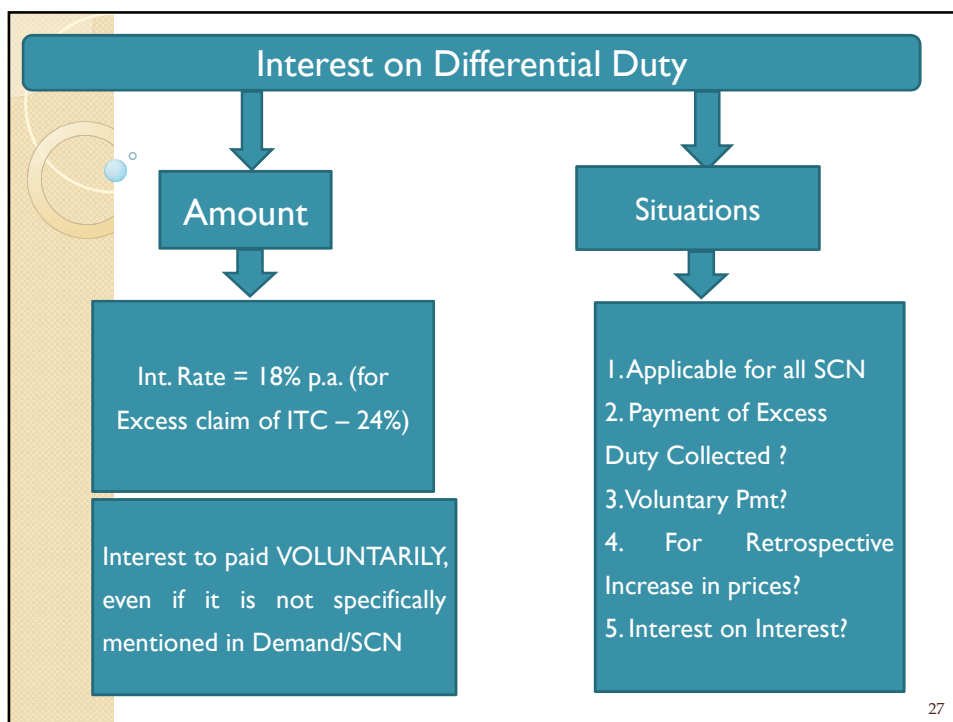
Tax/Interest – Paid within 30 days of Order – 50% PENALTY

“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 invocable 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

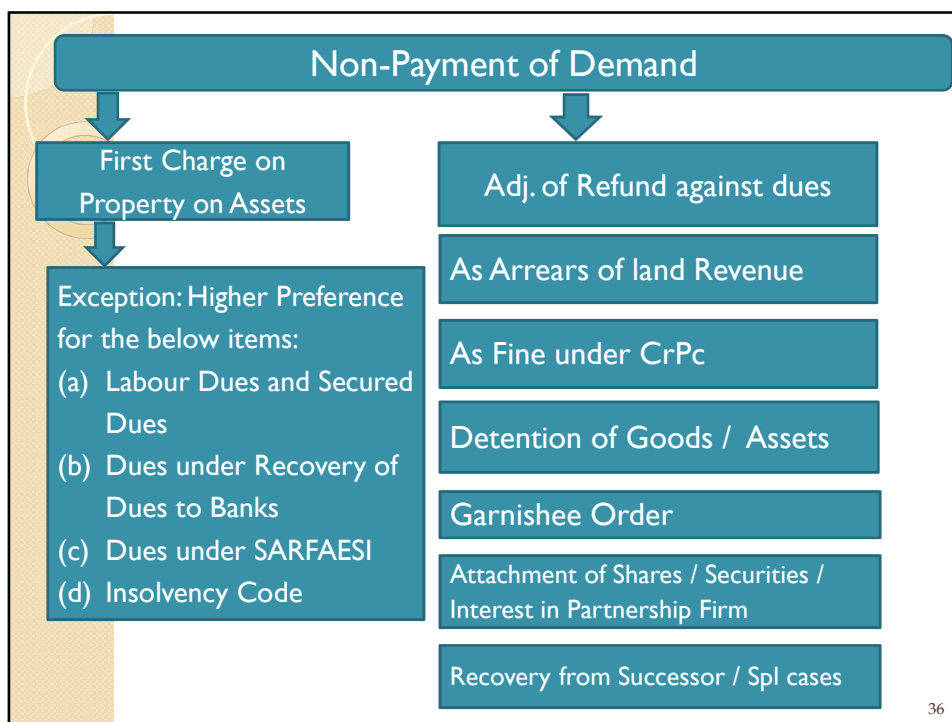
- (1) A registered person who has paid **integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply**, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
- (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?

Appeals and Revision

