

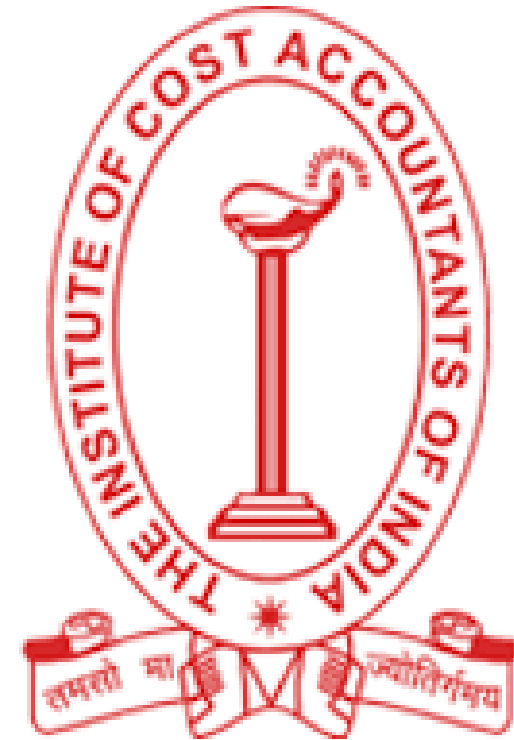
Demands and Recovery under GST

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Coverage

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).

Statutory provisions related to **Demands** under GST

– Chapter XV of CGST Act

Section 73: Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized 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 ITC wrongly availed or utilized **by reason of fraud or any wilful-misstatement or suppression of facts;**

Section 75: General Provisions relating to **determination of tax;**

Section 76: Tax Collected **but not paid to Government;**

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Statutory provisions related to **Recovery** under GST

– Chapter XV of CGST Act

Section 78: Initiation of **recovery proceedings**;

Section 79: **Recovery of tax**;

Section 80: Payment of tax and other amount **in instalments**;

Section 81: Transfer of property **to be void** in certain cases;

Section 82: Tax to be **first charge on property**;

Section 83: **Provisional attachment** to protect revenue in certain cases;

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Rule No.	Rule Heading
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150	Assistance by police.
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153	Attachment of interest in partnership.
154	Disposal of proceeds of sale of goods or conveyance and movable or immovable property.
155	Recovery through land revenue authority.
156	Recovery through court.
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158	Payment of tax and other amounts in instalments.
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Statutory provisions related to Demands and Recovery under GST – Chapter XVIII of CGST Rules

Rule No.	Rule Heading
160	Recovery from company in liquidation.
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Forms related to Demands and Recovery under GST

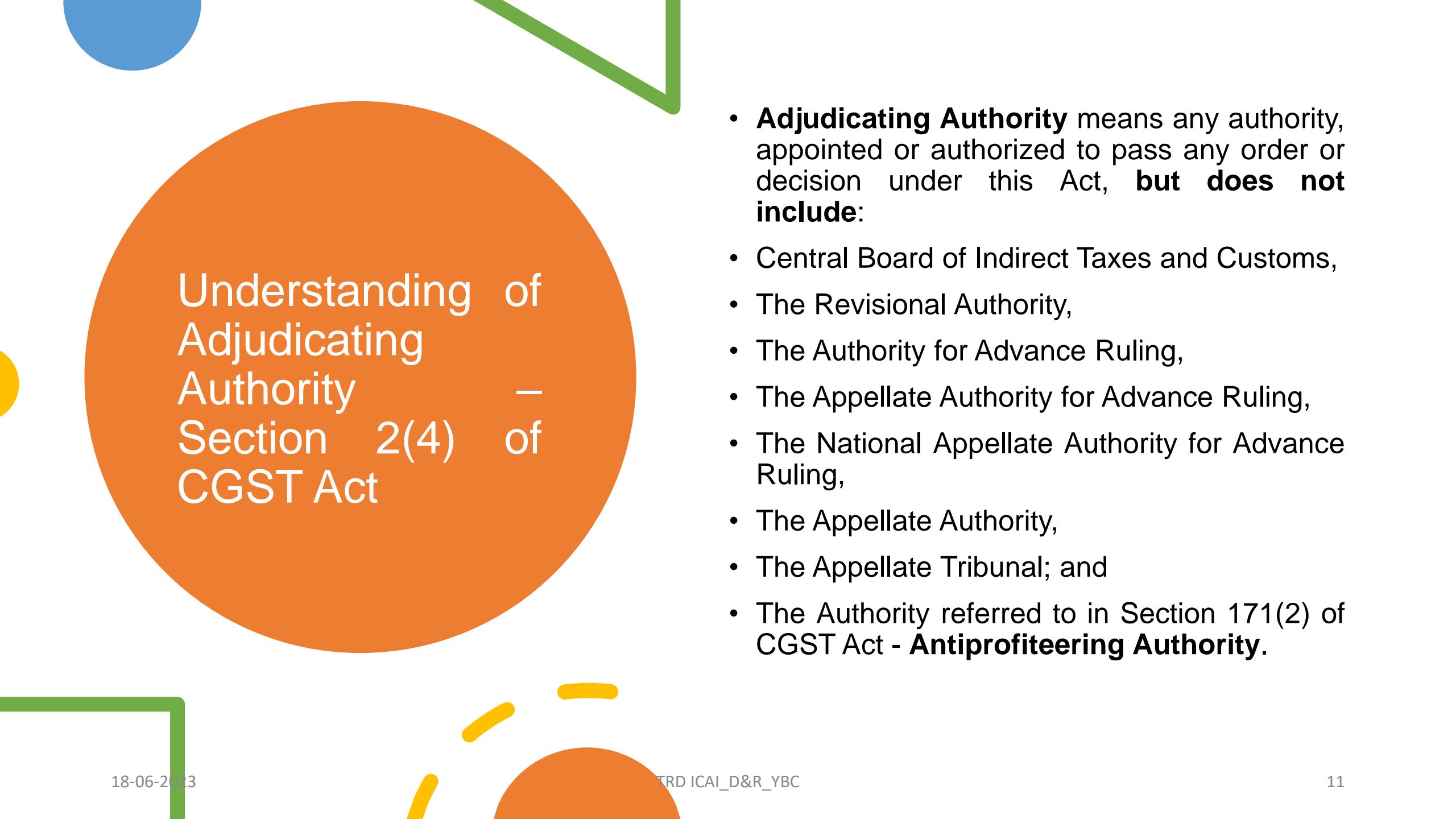
Form	Rule	Description
GST DRC 01	142(1)(a)	Summary of SCN;
GST DRC 01A	142 (1A)	Intimation of tax ascertained as being payable
GST DRC 02	142(1)(b)	Summary of Statement;
GST DRC 03	142 (2) & 142(3)	Intimation of payment made voluntarily or made against SCN or against statement;
GST DRC 04	142 (2)	Acknowledgement of acceptance of payment made voluntarily;
GST DRC 05	142(3)	Intimation of conclusion of proceedings;
GST DRC 06	142(4)	Reply to the SCN;
GST DRC 07	142(5)	Summary of the Order;
GST DRC 07A	142A(1)	Summary of the Order creating demand under existing laws
GST DRC 08	142(7)	Summary of Rectification / Withdrawal Order;
GST DRC 08A	142A(2)	Amendment/Modification of summary of the order creating demand under existing laws
GST DRC 09	143	Order for recovery through specified officer;
GST DRC 10	144	Notice of Auction;
GST DRC 11	144 & 147	Notice to successful bidder;

Forms related to Demands and Recovery under GST

Form	Rule	Description
GST DRC 12	144	Sale Certificate;
GST DRC 13	145	Notice to a third person;
GST DRC 14	145 (2)	Certificate of Payment to a third person;
GST DRC 15	146	Application before a Civil Court requesting execution for a Decree.
GST DRC 16	147(1) & 151(1)	Notice for attachment and sale of immovable / movable goods / shares under Section 78.
GST DRC 17	147(4)	Notice for Auction of Immovable / Movable Property under Section 79(1)(d).
GST DRC 18	155	Certificate of Action U/S 79(1)(c);
GST DRC 19	156	Application to the Magistrate for Recovery of Fine;
GST DRC 20	158(1)	Application for Deferred Payment / Payment in Instalment;
GST DRC 21	158(2)	Order for acceptance / rejection of Application for deferred payment / payment in instalments;

Forms related to Demands and Recovery under GST

Form	Rule	Description
GST DRC 22	159(1)	Provisional attachment of Property U/S 83;
GST DRC 22A	159(5)	Application for filing objection against provisional attachment of property;
GST DRC 23	159	Restoration of provisionally attached property / bank a/c U/S 83;
GST DRC 24	160	Intimation to Liquidator for recovery of amount
GST DRC 25	161	Continuation of Recovery Proceedings;



Understanding of Adjudicating Authority — Section 2(4) of CGST Act

- **Adjudicating Authority** means any authority, appointed or authorized to pass any order or decision under this Act, **but does not include:**
- Central Board of Indirect Taxes and Customs,
- The Revisional Authority,
- The Authority for Advance Ruling,
- The Appellate Authority for Advance Ruling,
- The National Appellate Authority for Advance Ruling,
- The Appellate Authority,
- The Appellate Tribunal; and
- The Authority referred to in Section 171(2) of CGST Act - **Antiprofitteering Authority.**

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- Adjudicating Authority (AA) is empowered to **issue Show Cause Notice (SCN)** to the **Taxable Persons** under various provisions of **GST laws** including under **Chapter XV – Demand and Recovery** - of CGST Act 2017.
- Show Cause Notices are issued to adhere to the **principles of Natural Justice**, before **fastening the demand**.
- The Show Cause Notice seeks **reply or explanation** from the Taxable Person to “**show cause**” to the Department as to why **tax dues**, as demanded under SCN, shall not be recovered from it.
- AA considers the replies furnished by the Taxable Person in response to such Show Cause Notice and **then pass the appropriate Order (known as Order-in-Original)**.

Appropriate Adjudicating Authority – Circular 31/05/2018 dated 09/02/2018

Officer to issue SCN	Issuance of SCN and OIA under Sec 73 & Sec 74 of CGST Act for CGST dues	Issuance of SCN and OIA under Sec 73 & Sec 74 of CGST Act for IGST dues as per U/S 20 of IGST Act	Issuance of SCN and OIA under Sec 73 & Sec 74 of CGST Act for CGST dues and IGST dues as per U/S 20 of IGST Act
Superintendent of Central Tax	Up to Rs. 10 lakhs.	Up to Rs. 20 lakhs.	Upto Rs. 20 lakhs.
Deputy / Assistant Commissioner of Central Tax	> Rs. 10 lakhs and upto Rs. 1 Crore	> Rs. 20 lakhs and up to Rs. 2 Crore	> Rs. 20 lakhs and up to Rs. 2 Crore
Additional / Joint Commissioner of Central Tax	> Rs. 1 Crore	> Rs. 2 Crore	> Rs. 2 Crore

Revisional Authority and Appellate Authority – based on Adjudicating Authority

If Adjudicating Authority is:	Revisional Authority	Appellate Authority
Superintendent of Central Tax, Deputy / Assistant Commissioner of Central Tax	Additional or Joint Commissioner of Central Tax.	Additional or Joint Commissioner of Central Tax (Appeals).
Additional or Joint Commissioner of Central Tax.	The Principal Commissioner or Commissioner of Central Tax	Commissioner of Central Tax (Appeals)

Section 73(1) of CGST Act

- **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 willful-misstatement or suppression of facts to evade tax,
- PROPER OFFICER shall serve Notice on the person
- 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 CGST Act

Overview of Section 73 of CGST Act

Section 73 deals with the cases where there is no invocation of fraud / suppression of facts / mis-statement etc.



The Section stipulates that where it appears to the Proper Officer that due to any reason **other than fraud / mis-statement / suppression of facts to evade tax**, tax has not been:



(a) paid or short paid or erroneously refunded; OR



(b) where input tax credit has been wrongly availed or utilized for,



the Proper Officer shall issue a Show Cause Notice(SCN) as to why the amount of tax should not be paid along with interest and penalty leviable thereon under the provisions CGST Act and Rules made thereunder.




The SCN need to be adjudicated within a **period of three years** from the due date **of filing of Annual Return**.




The SCN is required to be issued **at least three months prior to the time limit set for adjudication**.

Overview of Section 73 of CGST Act


If the person pays the tax along with interest **within 30 days of issue of SCN**, no penalty shall be payable and all proceedings in respect of such notice shall be **deemed to be concluded**.



If a person pays the amount of demand along-with interest **before issue of notice**, as **ascertained either on his own or ascertained by the Proper Officer**, and on such payment, informs the Proper Officer in writing regarding the same, **no notice shall be issued** with respect to the amount of tax so paid.

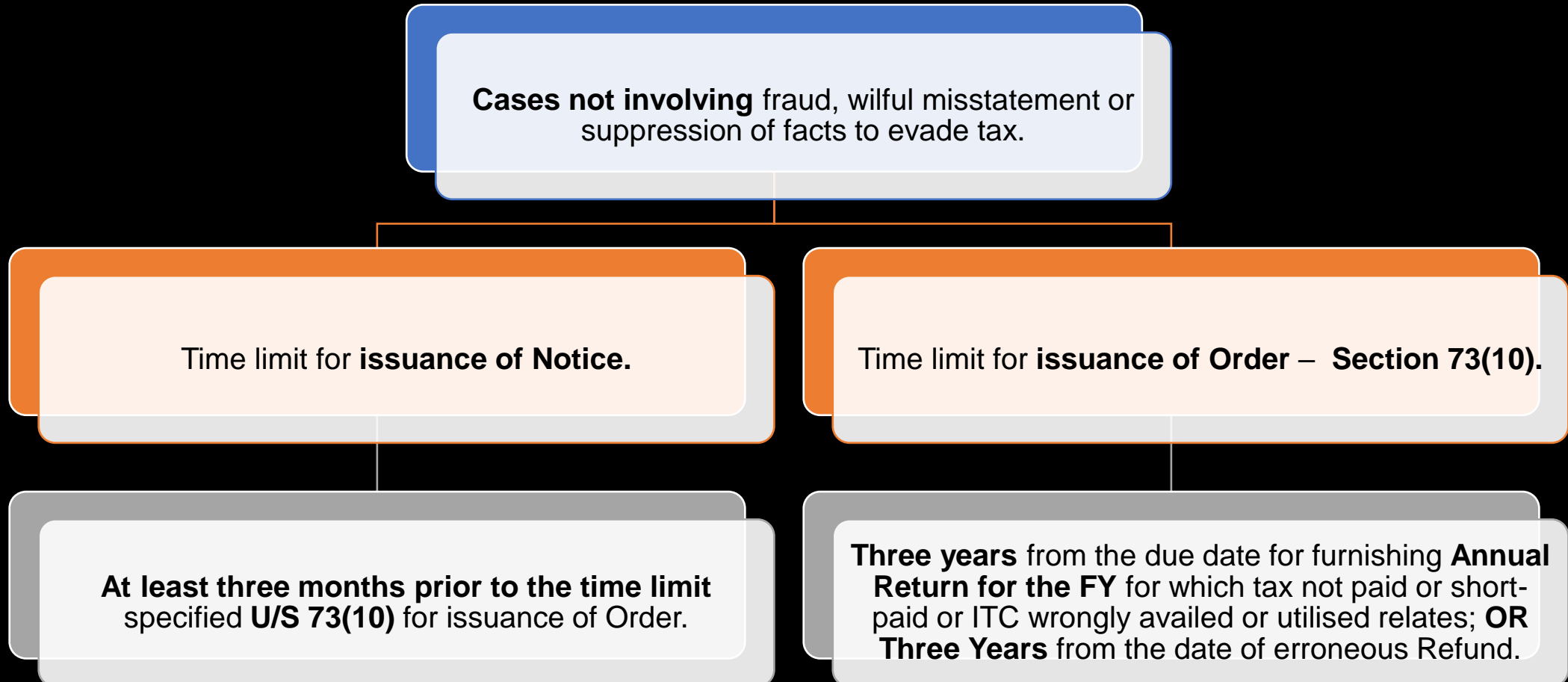


The Proper Officer, after considering the representations made by the person to whom SCN was issued, **shall issue an Order**, determining the **amount of tax, interest and penalty leviable on such person**.



Further the amount of penalty leviable in such order shall be equivalent to **10% of such tax or Rs. 10,000 whichever is higher**.

Time limit for issuance of Notice and Order U/S 73 of the CGST Act 2017



Revised time limit for issuance of Notice and passing of Order U/S 73 of CGST Act – Notification No.09/2023-CT dated 31/03/2023

Year	Due Date for filing of Annual Return	Revised time limit for issuance of Notice	Revised time limit for passing of Order
2017-2018	07-02-2020	30-09-2023	31-12-2023
2018-2019	31-12-2020	31-12-2023	31-03-2024
2019-2020	31-03-2021	31-03-2024	30-06-2024



Section 168A of CGST Act (Notification dated 31/03/2023 issued under this statutory provision)

168A. Power of Government to extend time limit in special circumstances:

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied **with due to force majeure**.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation . - For the purposes of this section, the expression "**force majeure**" means a case of war, **epidemic**, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

Ingredients of Section 73 of the CGST Act

Section 73 provides for: Service of notice by proper officer; and

Notice shall be served on the person who is chargeable with tax, who has:

- Not paid or short paid the tax;
- Wrongly availed or utilized Input Tax Credit;
- Received erroneous Refund Claim;

Such amounts shall be required to be determined along with the applicable interest as per Section 50 of CGST Act and penalty leviable under the provisions of CGST Act or the Rules made thereunder.

The Notice need to be issued **at least three months** prior to the **expiry of the time limit of three years for issuance of order.**

The proper office shall along with notice provide a **Summary in Form GST DRC-01** specifying therein the details of the amount payable.

Section 74(1) of CGST Act

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

Overview of Section 74 of CGST Act

Section 74 deals with cases where the provisions related to fraud /suppression / mis-statement etc. are invoked.

The Section stipulates that where it appears to the Proper Officer that by reason of fraud / mis-statement / suppression of facts to evade tax, tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for, the Proper Officer shall issue a Show Cause Notice (SCN) as to why the amount of tax should not be recovered along with interest and penalty leviable thereon under the provisions of CGST Act and Rules made thereunder.

The SCN need to be adjudicated within a period of five years from the due date of filing of Annual Return.

The SCN needs to be issued at least six months prior to the time limit set for adjudication.

Overview of Section 74 of CGST Act

A person chargeable with tax in cases of fraud / suppression of facts / willful misstatement, pays the amount of demand along-with interest before issue of Notice, then he shall have an option to pay the amount of tax along with interest and penalty equal to **15 percent of the tax** involved, as ascertained either on his own or ascertained by the Proper Officer, and on such payment, **no Notice shall be issued with respect to the tax so paid.**

If notice is issued under Section 74 and thereafter the taxable person makes payment of tax along with interest and with penalty **equal to 25% of such tax within 30 days of issue of Notice**, all proceedings in respect of such notice shall be **deemed to be concluded.**

In case a notice is adjudicated under Section 74 and order is issued confirming tax demand and penalty, and if the person pays the tax determined by the order along with interest and a penalty equivalent to **50% of such tax within thirty days of the communication of order**, all proceedings in respect of the said tax shall be deemed to be concluded.

Time limit for issuance of Notice and Order U/S 74 of the CGST Act 2017

Cases involving fraud, wilful misstatement or suppression of facts to evade tax.

Time limit for **issuance of Notice.**

At least six months prior to the time limit specified **U/S 74(10)** for issuance of Order.

Time limit for **issuance of Order – Section 74(10).**

Five years from the due date for furnishing **Annual Return for the FY** for which tax not paid or short-paid or ITC wrongly availed or utilised relates; **OR**
Five Years from the date of erroneous Refund.

Indicative Period for issuance of Notice and passing of Order U/S 74 of CGST Act (can be revised)

Year	Due Date for filing of Annual Return	SCN Can be issued up to four years and six months from due date of AR	Order to be passed within five years from the due date of AR
2017-2018	07-02-2020	05-08-2024	06-02-2025
2018-2019	31-12-2020	29-06-2025	30-12-2025
2019-2020	31-03-2021	29-09-2025	30-03-2026



Brief overview of Circular No. 185/17 / 2022-GST dated 27/12/2022

Show cause notice under Section 73 of the CGST Act must be issued within 2 years and 9 months from the due date of furnishing the annual return or from the date of erroneous refund, except in cases involving fraud, wilful misstatement, or suppression of facts to evade tax payment.

If the show cause notice under Section 74 of the CGST Act is issued within 4 years and 6 months from the due date of furnishing the annual return or from the date of erroneous refund, the entire amount mentioned in the notice will be covered under the predetermined amount.

If the show cause notice under Section 74 is issued for multiple financial years, the amount payable in terms of Section 73 will be re-determined only for the financial year for which the notice was issued within the specified time limit, as per Section 73(2) of the Act.

Penalty payable U/S 73 and U/S 74 of CGST Act

Timeline for Compliance	Section 73	Section 74
Before issuance of SCN	No Penalty U/S 73(5);	15% of Tax Amount U/S 74(5);
Within 30 days of issuance of SCN;	No Penalty U/S 73(8);	25% of Tax Amount U/S 74(8);
Determination of Penalty after considering the representations made during the proceedings;	10% of Tax Amount or Rs. 10000-00, whichever is higher U/S 73(9);	50% of Tax Amount where payment of tax dues is made within 30 days of issuance of Order or 100% Tax Amount after 30 days

Other Statutory Provisions related to Section 74 of CGST Act

Section / Rule	Heading
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 75	General provisions relating to determination of tax.
Section 50	Interest on delayed payment of tax.
Section 122	Penalty for certain offences.
Section 125	General penalty.
Section 129	Detention, seizure and release of goods and conveyances in transit.
Section 130	Confiscation of goods or conveyances and levy of penalty.
Section 132	Punishment for certain offences.
Rule 142	Notice and order for demand of amounts payable under the Act.

Ingredients of Section 74 of the CGST Act

The section covers certain situations for demand of taxes in cases of fraud, or any kind of willful mis-statement or suppression of facts with an intent to evade payment of tax.

Whenever the tax is

not paid or

short paid or

credit wrongly availed or utilized or

erroneously refunded

with an intent to evade tax by way of

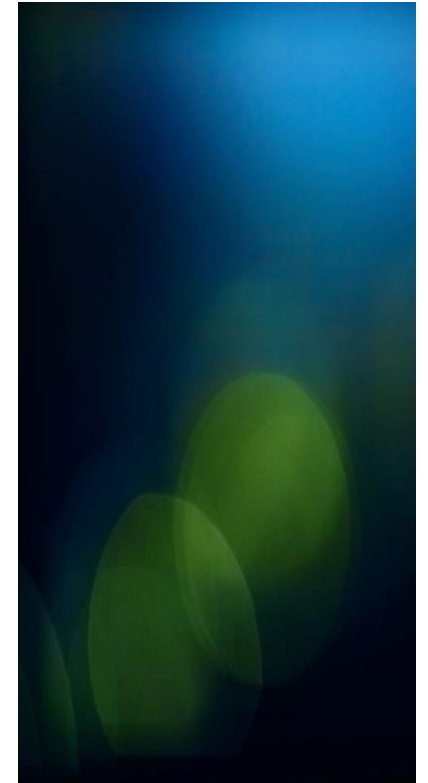
Fraud;

Wilful misstatement;

Suppression of facts;

the Proper Officer shall issue a notice for such amount along with interest as per Section 50 and penalty equivalent to the amount of tax specified in notice.

The Proper Officer shall along with the Notice provide a summary in Form GST DRC-01 specifying therein the details of the amount payable.



Meaning of Fraud

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Fraud is defined to be an intentional act by an individual or a group of them, who are charged with governance (who are in authority), or third parties, **involving the use of deception to obtain an unjust or illegal advantage.**

A fraud could take the form of **misstatement of information (financial or otherwise) or misappropriation of the assets of the entity.**

A fraudster would always find **an illegal way to take undue advantage** of provisions of the tax law and thereby enrich himself by such unlawful means.

GST is no escape for such fraudsters.

Major Areas Where GST Fraud Cases in India Evolved

Input tax credit and Invoices

Refunds

Meaning of Suppression of Facts and Wilful Misstatement

The term “suppression” is specifically explained to mean:

non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder; **OR**

failure to furnish any information on being asked for, in writing, by the Proper. Officer.

“**Willful misstatement**” generally covers a case of deceit but generally with the connivance of another.

Meaning of Prosecution

Prosecution is the formal initiation of a criminal proceeding by the government, wherein they present the charges against an individual accused of committing a crime.

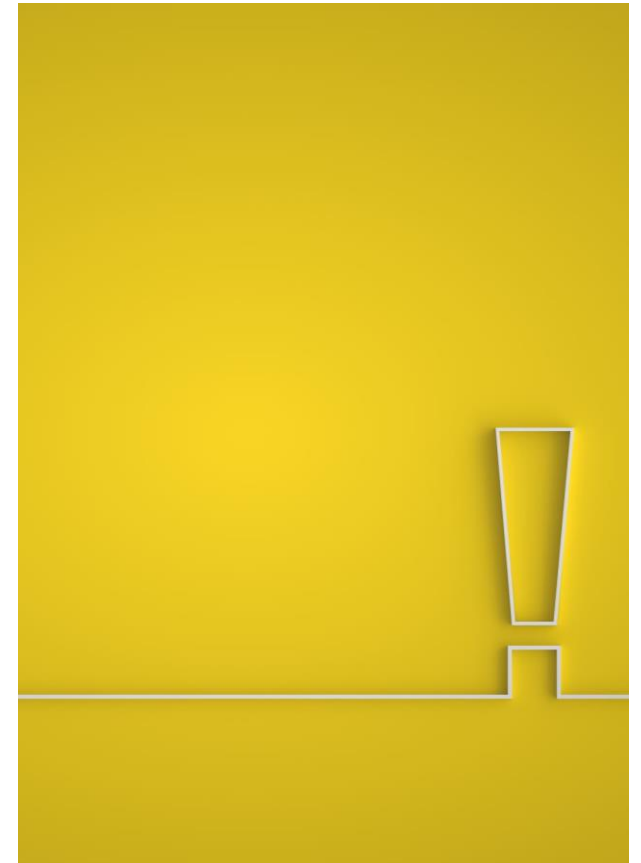
The purpose of prosecution is to impose a suitable punishment and penalty on the accused.

It serves as the starting point for a legal process in which the government aims to ensure that companies and individuals involved in tax evasion are held accountable.

It is important to note that ongoing assessment, reassessment, or appeals related to taxes do not prevent the commencement of prosecution.

There is no legal provision that prohibits the launch of prosecution for the offenses in question until the assessment or reassessment proceedings against the individual being assessed are completed.

However, it is necessary to establish the presence of mens rea, which refers to the intent or knowledge of wrongdoing, as a prerequisite for initiating prosecution proceedings.



Filing an intimation of payment (FORM GST DRC-03) – Important FAQ

What is the facility for Payment on Voluntary Basis?

Payment on Voluntary Basis is a facility given to taxpayers to make payment u/s 73 or 74 of the CGST Act, 2017 within 30 days of issuance of Show Cause Notice (SCN). Payment could also be made by taxpayers before SCN is issued.

When can I make voluntary payment?

You can make voluntary payment before issue of notice u/s 73 or 74 of the CGST Act, 2017 or within 30 days of issue of show cause notice (SCN) under the said sections. You cannot make voluntary payment after 30 days of issue of SCN.

What are the pre-conditions to make voluntary payment?

The pre-conditions to make voluntary payment are:

- a. In case, voluntary payment is made before issue of SCN
 - Show Cause Notice under determination of tax should not have been issued.
- b. In case, voluntary payment is made after issue of SCN or statement
 - 30 days' time has not lapsed since SCN is issued.

Filing an intimation of payment (FORM GST DRC-03) – Important FAQ

How can I make voluntary payment?

To make voluntary payment against the liability (tax, interest & penalty) based on self-ascertainment of tax, navigate to **Services > User Services > My Applications > Intimation of Voluntary Payment - DRC - 03** option.

Can I make partial payment against a liability raised in a SCN?

GST Portal does not allow for making partial payments against a liability raised in a SCN. Complete payment of the amount being demanded in SCN has to be made.

Can I save the application for intimation of voluntary payment?

Application for intimation of voluntary payment can be saved at any stage of completion for a maximum time period of 15 days. If the same is not filed within 15 days, the saved draft will be purged from the GST database. To view your saved application, navigate to **Services > User Services > My Saved Applications** option.

What will happen on filing of Form GST DRC-03?

Electronic Liability Register, Electronic Cash Ledger and Electronic Credit Ledger will be updated upon filing of Form GSTDRC-03 that is Debit/Credit (both) entry will be posted simultaneously and PRN will be generated accordingly.

Overview of Section 80 - Payment of taxes and other amounts in instalments

Section 80 empowers the Commissioner to grant permission **only to the taxable person** to make payment of any amount due on instalment basis, on an application filed electronically in **Form GST DRC-20**).

The Commissioner after considering the request by the taxable person (**in Form GST DRC-20**) and report of the jurisdictional office, may issue an order in **Form GST DRC-21**, allowing the taxable person to either **extend the time** or **allow payment of any amount** due under the Act on instalment basis.

Section 80 applies to amounts due other than the self-assessed liability shown in any return.

The instalment period shall **not exceed 24 months**.

The taxable person shall also be **liable to pay prescribed interest** on the amount due from the first day such tax was due to be payable till the date the tax is paid.

If default occurs in payment of any one instalment the **taxable person would be required to pay the whole outstanding balance** payable on such date of default itself without further notice.



Practical example on payment of Tax by Instalments – Assumptions and Expectations

Taxable Person A has tax dues amounting to Rs. 50,00,000-00 from **01/04/2020** onwards.

A requested the Commissioner of Central Tax to grant him facility to make payment of tax dues in instalments in terms of Section 80 of the CGST Act, in view of his adverse financial position and the related liquidity issues.

The Commissioner of Central Tax has agreed to grant instalments facility to A and issued orders for payment of tax dues in five equal monthly instalments commencing from 01/11/2022 onwards.

Highlight the amount of instalment on which interest liability shall accrue in terms of Section 50 of the CGST Act in the above situation.



Practical example on payment of Tax by Instalments – Amount on which interest is payable

Instalment No.	Payment Date	Interest to be paid as per Section 50 of CGST Act - No. of Days	Amount on which interest to be paid
1	01-11-2022	01.04.2020 to 31.10.2022 - 2 years and 7 months	1000000.00
2	01-12-2022	01.04.2020 to 31.10.2022 - 2 years and 8 months	1000000.00
3	01-01-2023	01.04.2020 to 31.10.2022 - 2 years and 9 months	1000000.00
4	01-02-2023	01.04.2020 to 31.10.2022 - 2 years and 10 months	1000000.00
5	01-03-2023	01.04.2020 to 31.10.2022 - 2 years and 11 months	1000000.00

Section 80: Payment of taxes and other amounts 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 twenty-four, 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.

Importance Guidance provided through FAQ on Applying for Deferred Payment or Payment in Instalments

What is the purpose of FORM GST DRC - 20?

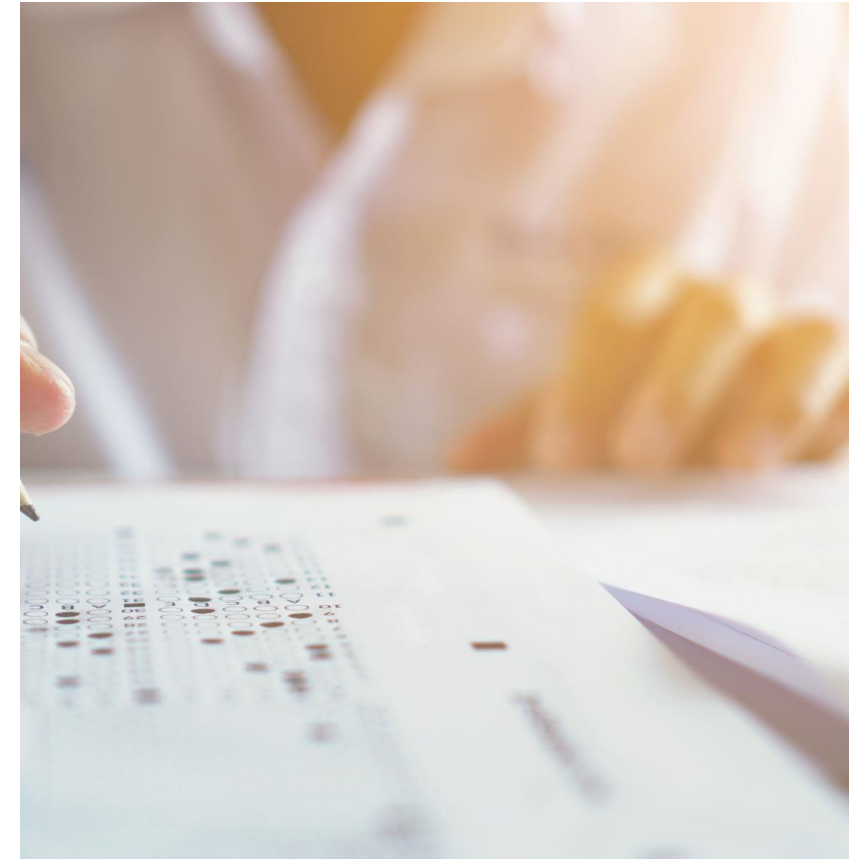
FORM GST DRC - 20 is an application form that can be filed by any taxpayer to apply for one of the following two options available to him in case he cannot pay the entire amount due under the GST Act in one go:

Deferred payment: when dues are deferred for payment at later stage.

Payment in instalments: when due is paid in installments over a period of time.

When can I file FORM GST DRC - 20?

You can file FORM GST DRC - 20 when a demand is pending for recovery under GST Act against you and you wish to apply for deferred payment or payment in instalments of amount due under the GST Act. You are required to have valid login credentials to file this application.



Importance Guidance provided through FAQ on Applying for Deferred Payment or Payment in Instalments

Can I file FORM GST DRC - 20 in respect of amount against return related demands?

No, application for deferred payment using FORM GST DRC - 20 cannot be filed against return related demands. You can file application for deferred payment using FORM GST DRC - 20 for other than return related demands, which are posted in Electronic Liability Register Part-B.

How many applications for deferred/payment in Instalments can I file?

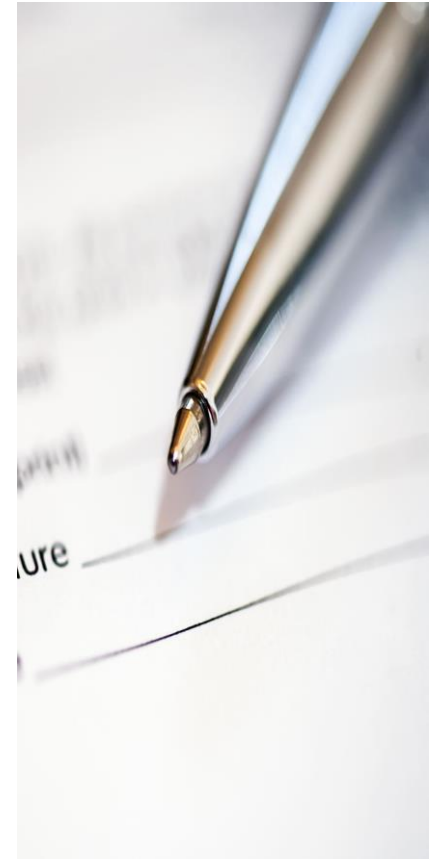
Only one “Application for Payment in Instalments” can be submitted against a particular Demand ID.

In FORM GST DRC - 20, I need to enter the number of months for my instalment. Is there any limitation on the number of months?

Yes. Maximum number of instalments allowed is 24.

What will happen if I am unable to make the required payment, after the acceptance of my application for payment in Instalments?

In case there is any default in payment of any one installment on its due date, the whole outstanding balance payable on such date will become due and payable forthwith and will be liable for recovery without any further notice to the Taxpayer.



Importance Guidance provided through FAQ on Applying for Deferred Payment or Payment in Instalments

How is the interest calculated if I select the option of "Monthly Instalments" in FORM GST DRC - 20?

Interest is calculated considering the following points:

Interest will be applicable only on the tax / cess amount applied for instalment / deferment.

No interest will be payable on the Interest, Penalty and any other amount in the Demand ID.

Interest will not be calculated by system as part of application for deferred payment / payment in instalment. Instead, if any interest needs to be recovered from taxpayer as part of monthly instalment, then tax officer will create separate demand ID which will be paid by taxpayer.



Section 83 of CGST Act – Provisional Attachment of Property

This section applies **‘after initiation of’ any proceedings under** (New Provision effective from 01/01/22):

- (a) Chapter XII, covering sections 59 to 64 – Assessment.
- (b) Chapter XIV, covering sections 67 to 72 – Inspection, Search, Seizure and Arrest.
- (c) Chapter XV, covering sections 73 to 84 – Demands and Recovery.

The provisional attachment of property of the taxable person shall be **executed by the Commissioner**.

Provisional attachment **‘during pendency’ and ‘after initiation of’** any proceedings do not alter the power to attach property prior to any proceedings but only after clear steps have been taken to invoke the powers under the respective **sections (or Chapters)** of the law as referred.

‘Initiation’ is when steps are taken to ‘set the law in motion’ as defined in the respective provisions of law.

Once proceedings are ‘initiated’, the said proceedings are ‘pending’, and these powers become invokable.



Section 83 of CGST Act – Provisional Attachment of Property

The provisional attachment under section 83 can be '**during investigation**' whereas recovery under section 79 can be only after '**final demand**' arises out of any order.

Provisional attachment is not the **same as confiscation**.

Confiscation results in property being **taken over and vesting with the Government**.

Provisional attachment will leave the property where it is but only the freedom of taxpayer to **access and use it is prohibited by this order of attachment**.

The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to provisionally attach the property.

The Commissioner may also seize bank accounts of such persons, if it is in the interest of revenue.

Attachment of property belonging to taxable person alone was permitted.

The amended provision permits attachment of property belong to (i) taxable person and (ii) person who is the mind behind the offences as identified in section 122(1A) of the CGST Act, are permitted to be covered by this amended provision.

Section 83 of CGST Act – Provisional Attachment of Property

Such provisional attachment would be valid for one year from the date of the order made by the Commissioner in **Form GST DRC-22**.

Where the property attached is perishable or hazardous in nature and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in Form GST DRC-23, on proof of payment.

Where the taxable person fails to pay the aforesaid amount, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

Any person whose property is attached may, within 7 days of the attachment, file an objection to the effect that the property attached was or is not liable to attachment and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in Form GST DRC-23.

The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in Form GST DRC- 23.

Overview of statutory provisions – Compounding of offences

Compounding of an offence refers to the **payment of a monetary sum** instead of facing prosecution for the offence committed.

An application for compounding can be **made either before or after the institution of prosecution** proceedings.

Compounding is **considered as a compromise** between the offender and the tax department, resolving the matter without going through a full legal process.

Each **specified offence** can be compounded only once, providing a one-time opportunity for resolution.

According to Rule 162 of the CGST Rules, the **application for compounding** must be filed using Form GST-CPD-01.

Upon receiving the application, the Commissioner **will request a report** from the concerned officer to examine the particulars mentioned and gather any other relevant information.

Overview of statutory provisions – Compounding of offences

After giving the **applicant an opportunity to be heard** and considering the application, if the Commissioner is satisfied that the applicant has cooperated and made a full and true disclosure of the facts, an order will be issued in Form GST-CPD-02.

The order may allow the application, specifying the **compounding amount** and granting immunity from prosecution, or it may reject the application, stating the grounds of rejection.

The Commissioner is required to **issue the order within 90 days** from the receipt of the application.

The application for compounding **shall not be allowed** unless the applicant has paid the tax, interest, and penalty for which the application has been made.

Overview of statutory provisions – Compounding of offences

The immunity granted to the applicant **can be withdrawn by the Commissioner** at any time if it is discovered that the person has concealed material information or provided false evidence during the compounding proceedings.

In such cases, the person may be **tried for the original offence** for which immunity was granted or for any other offence related to the compounding proceedings.

The provisions of the Act will apply as **if no immunity had been granted** in such situations.

Upon receiving the order allowing compounding, the applicant is required **to pay the compounding amount** as ordered by the Commissioner within 30 days from the date of receipt.

Overview of statutory provisions – Compounding of offences

The applicant must also provide proof of payment to the Commissioner within the specified timeframe.

If the applicant fails to make the payment within the specified time, the order issued by the Commissioner will be considered void and invalidated.

Upon payment of the compounding fee, the indicated proceedings will come to an end, and no further criminal proceedings can be initiated.

The amount of the compounding fee prescribed under this section will be determined as follow:

The minimum amount **will not be less than ₹ 10,000 or 50 percent of the tax amount, whichever is higher.**

The maximum amount **will not be less than ₹ 30,000 or 150 percent of the tax amount, whichever is higher.**

Where Compounding of offences is not permissible?

-
- (i) A person who has already compounded an offence once, where the **value of the supply exceeds ₹One Crore.**
-
- (ii) A person who has been **convicted by a Court** under the provisions of this Act.
-
- (iii) A person who has already availed the option to **compound offences once** for the offences specified in **clauses (a) to (f) of section 132(1)** and **offences specified in clause (l)** that are related to the offences specified in clauses (a) to (f).
-
- (iv) A person who has been **accused of committing an offence under this Act**, which is also an offence under any other prevailing law.
-
- (v) A person who has been **accused of committing an offence** under section 132(1)(g), 132(1)(j), or 132(1)(k) of the Act.
-
- (vi) A **prescribed class of persons**, as determined by the relevant authorities.



Viewing Prosecution Notice Issued by Tax Officials – Important FAQ

What are Prosecution Proceedings?

Prosecution Proceedings are instituted against the taxpayers who are involved in cases of tax evasion beyond the specified limit and for which penal actions are applicable on specific events subject to certain conditions with varied quantum of punishments. Some of the offences are compoundable while some others are not.

Prosecution actions include filing of private complaint based on facts which constitute an offence (under the GST law) for initiation of criminal proceedings, when the Tax official has reason to believe that any person has committed any of the offences under provisions of GST law. (For details, refer Section 132 of the CGST/SGST Act).

Viewing Prosecution Notice Issued by Tax Officials – Important FAQ

What are the steps involved in Prosecution Proceedings?

Following steps are involved in Prosecution Proceedings:

- 1. After taking due sanction from the Commissioner, the Tax Official files a Private Complaint (offline) against the Taxpayer, with the First-Class Judicial Magistrate/Court.*
- 2. Tax Official issues the Prosecution Notice against the Taxpayer. Intimation of the issue of Notice is sent to the concerned taxpayer on his/her registered email id and mobile. Dashboard of the Taxpayer is also updated with the record of the issued Notice. He/she can view the issued Notice from the following navigation: **Services > User Services > View Additional Notices /Orders.***

Viewing Prosecution Notice Issued by Tax Officials – Important FAQ

In what cases, can a Prosecution Complaint against me be closed?

The Prosecution Complaint against you can be closed in the following cases:

If you file the application for compounding of offence and the same is allowed by the Commissioner and the compounding amount (tax, interest and penalty involved) is also paid by you within the time specified in the Order, then the private complaint filed with the First-Class Judicial Magistrate or Competent Court will be withdrawn/stand abated. (for details refer Section 138).

If you file the application for compounding of offence and the same is allowed by the Commissioner and the compounding amount is paid by you within the time specified in the Order, but the private complaint is not yet filed with the First-Class Judicial Magistrate or Competent Court, then no further action shall be taken for prosecution in respect of same offence.



Viewing Prosecution Notice Issued by Tax Officials – Important FAQ

If the private complaint filed with the First-Class Judicial Magistrate or Competent Court is set aside, then the case stands closed.

If you have complied with the order of the First-Class Judicial Magistrate or Competent Court, then the case stands closed.

During Prosecution Proceedings, what all Status changes does the Case undergo?

During Prosecution Proceedings, the Case undergoes following Status changes:

Complaint filed: *When details of prosecution complaint is uploaded by the Tax Official.*

Closed: *When status of complaint is updated as closed by the Tax Official.*

Filing Application for Compounding of Offence (Form GST CPD-01) and Taking Actions in the Subsequent Proceedings – Important FAQ

What is the purpose of Form GST CPD-01?

Form GST CPD-01 is Application for Compounding of Offence. Any Taxpayer can file this application in the following two cases:

Prosecution is instituted: This means that an Order for initiation of prosecution has been issued against the Taxpayer. He/she would have received a Prosecution Notice, issued by a concerned Tax Official, regarding the same.

Prosecution is contemplated: This means that the taxpayer is voluntarily filing this application for Compounding of Offence. In this case, he/she might have received a Prosecution Notice or an Order, issued by a concerned Tax Official.



Q.1

As per provisions contained in Section 73 of the CGST Act, 2017, the Proper Officer is empowered to issue an Order with a maximum demand up to _____?

- A. Amount of Tax + Interest + Penalty @ 10% of Tax;
- B. Amount of Tax + Interest + Penalty @ 10% of Tax or Rs. 10,000-00, **whichever is higher;**
- C. Amount of Tax + Interest + Penalty @ 10% of Tax or Rs. 10,000-00, **whichever is lower;**
- D. Amount of Tax + Interest + Penalty @ 20% of Tax or Rs. 10,000-00, **whichever is lower;**

Answer:- B

The time limit for issue of Order in cases not involving fraud, willful misstatement or suppression of facts to evade tax as per provisions U/S 73 of CGST Act is _____?

- A. 1 Year;
- B. 2 Years;
- C. 3 Years;
- D. 5 Years;

Answer:- C

The time limit for issue of Order in cases involving fraud, willful misstatement or suppression of facts to evade tax as per provisions U/S 74 of CGST Act is _____?

- A. 1 Year;
- B. 2 Years;
- C. 3 Years;
- D. 5 Years;

Answer:- D

As per provisions contained in Section 76 CGST Act / relevant CGST Rules, any amount of tax collected shall be deposited to the credit of the Central or a State Government in circumstances _____?

- A. where the supplies in respect of which such amount was collected are taxable;
- B. regardless of whether the supplies in respect of which such amount was collected are taxable or not;
- C. where the supplies in respect of which such amount was collected are not taxable;
- D. where the amount of tax collected is in excess of input tax credit;

Answer:- B

The time limit for issue of Order in cases where tax collected but not paid to the Government as per provisions U/S 76 of CGST Act is _____?

- A. 1 Year from the date of issue of Notice;
- B. 2 Years from the date of issue of Notice;
- C. 3 Years from the date of issue of Notice;
- D. 5 Years from the date of issue of Notice;

Answer:- A

Section _____ CGST Act deals with tax erroneously collected and deposited with the Central or a State Government?

- A. 57;
- B. 74;
- C. 76;
- D. 77;

Answer:- D

_____ are consequences of IGST erroneously classified and paid to the Central Government or a State Government instead of CGST and SGST or UGST?

- A. Seek refund of IGST and make payment of CGST and SGST or UGST with interest;
- B. Seek refund of IGST and make payment of CGST and SGST or UGST without interest;
- C. Adjust against future tax liability;
- D. Seek refund of CGST and SGST or UGST and make payment of IGST;

Answer:- B

SCN stands for _____?

- A. Special Cause Notification;
- B. Serve the Cause Notice;
- C. Suppression Cause Notice;
- D. Show Cause Notice;

Answer:- D

As per provisions under GST law / GST Rules, Notice can be served to the taxable person by _____ of the following modes of communication?

- A. By Registered Post;
- B. By sending a communication to the registered email id of the taxable person, if any;
- C. By making it available on the Common Portal;
- D. Any or All of the above;

Answer:- D

As per provisions under CGST Act / CGST Rules, the prescribed monetary limit for issuance of Notice and Orders by the Superintendent of Central Tax for CGST dues is _____?

- A. Not exceeding Rs. 10 lakhs;
- B. Not exceeding Rs. 20 lakhs;
- C. Above Rs. 10 lakhs but not exceeding Rs. 1 crore;
- D. Above Rs. 20 lakhs but not exceeding Rs. 2 crore;

Answer:- A

_____ is the Rate of Penalty in situations involving defaults U/S 74 of CGST Act if the payment has been made within 30 days of the issuance of the Notice (SCN)?

- A. Ten per cent;
- B. Fifteen per cent;
- C. Twenty per cent;
- D. Twenty-five per cent;

Answer:- D

_____ is the Rate of Penalty in situations involving defaults U/S 74 of CGST Act if the payment has been made within 30 days of the issuance of the Notice (SCN)?

- A. Ten per cent;
- B. Fifteen per cent;
- C. Twenty per cent;
- D. Twenty-five per cent;

Answer:- D

**As per provisions under CGST Act / CGST Rules,
_____ is the maximum number of times for which
Personal Hearing can be adjourned?**

- A. one;
- B. two;
- C. three;
- D. four;

Answer:- C

As per provisions under CGST Act / CGST Rules, in a situation where Notice is issued for total tax dues (tax, interest and penalty) amounting to Rs. 1.00 crore, can Proper Officer issue Order in excess of Rs. 1.00 crore?



- A. Yes, where it is necessary to do so;
- B. No, Proper Officer is not empowered to do so;
- C. Yes, at the discretion of Proper Officer;
- D. Yes, at the discretion of Principal Commissioner of Central Tax;

Answer:- B

_____ is the time limit for payment of tax dues from the date of service of Order?

- A. One month;
- B. Two months;
- C. Three months;
- D. Four Months;

Answer:- C



**SUCCESS IS NOT FINAL;
FAILURE IS NOT FATAL:
IT IS THE COURAGE TO CONTINUE
THAT COUNTS.**

WINSTON S. CHURCHILL

This PPT is prepared purely for academic and knowledge sharing purposes with the aid of information / material / law provisions freely available on the internet. This PPT does not claim coverage of exhaustive provisions under CGST Act.

Thanks for your Attention!!!

Any Questions???