

GST COURSE

DEMAND & RECOVERY

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Show Cause Notice u/s 73 or 74 of CGST Act 2017.



Registered Persons

May Make **Mistakes** or are engaged in **Fraud** through

Short Payment of GST

Non Payment of GST

Wrong Availment or Utilization of Input Tax Credit

Erroneous Refund of GST



Proper Officer

Recovers Amount from Registered Person / Taxable Person by issuing

Show Cause Notice

U/s **73 or 74** of CGST Act 2017

Show Cause Notice u/s 73 or 74 of CGST Act 2017.



Registered Persons

Engaged in Short Payment, Non Payment, Excess Availment or Utilization of ITC, Erroneous Refund

By reason of



Non Fraud Cases

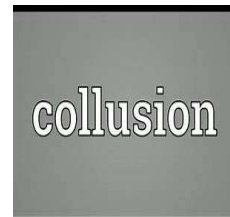


Fake Shipping Bill

Fake GST
Registration



F = Fraud



C = Collusion



W= Wilfull
Misrepresentation



S=
Suppression



C =
Contravention
of Provisions

Proper Officer shall issue **Show Cause
Notice u/s 73** of CGST Act 2017

For Cases of **FCWSP**, Proper Officer shall issue **Show Cause Notice u/s 74**
of CGST Act 2017

Meaning and Examples of Tax Not Paid, Short Paid, Excess Input Tax Credit and Erroneous Refund of Input Tax Credit.

Example of Tax (GST) Not Paid.



What is the meaning of Tax (GST) not paid?



Supplier



Assumed Goods are

GST Exempt Goods

However Goods were
subjected to

GST @ 12%



Supplier

Have **"NOT PAID TAX (GST)"** to
GST Department

Example of Tax (GST) Not Paid.



Supplier(Reg'd in GST
in Multiple States)



27XXXXXX1ZT



Branch Transfer of Goods (Value of Goods – Rs 50 Lakhs)

For Branch Transfer, he **"DID NOT PAY GST"** on Rs 50 Lakhs
(His Opinion was that Goods are not sold)



07XXXXXX1ZT

However as per **Section 25** of CGST
Act 2017 read with **Schedule I and**
Rule 28 of CGST Rules 2017

**Branch Transfer between Distinct
Persons** (having separate GST
Registration) shall be

TAXABLE
(Subjected to GST)



Supplier

Have **"NOT PAID TAX (GST)"** to
GST Department

Example of Tax (GST) Short Paid.



What is the meaning of Tax (GST) **Short paid?**



Supplier



R.P. classified services @ 12%

However Applicable GST Rate
on **Services was 18%**

R.P. **paid GST @ 12%**

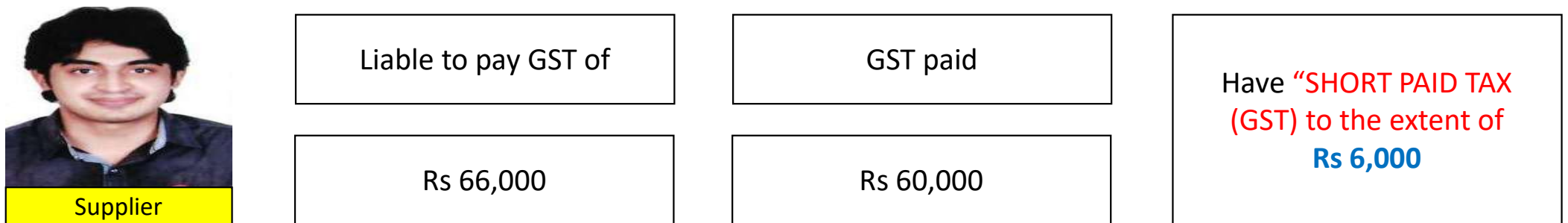
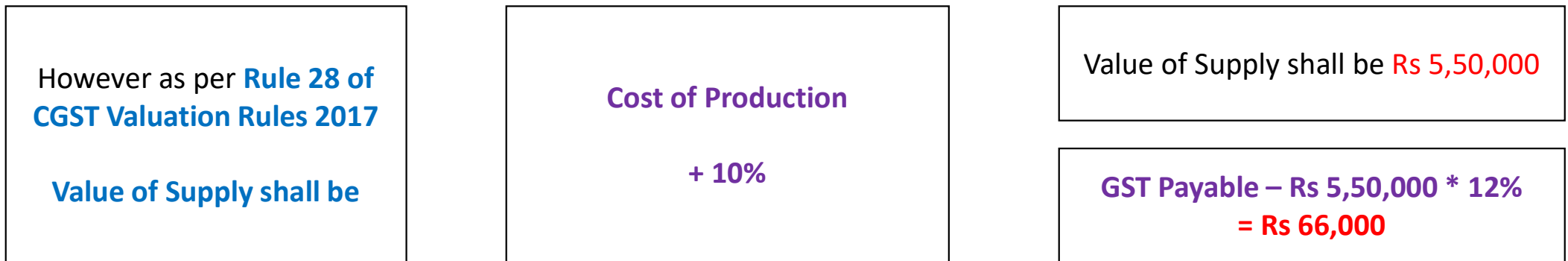
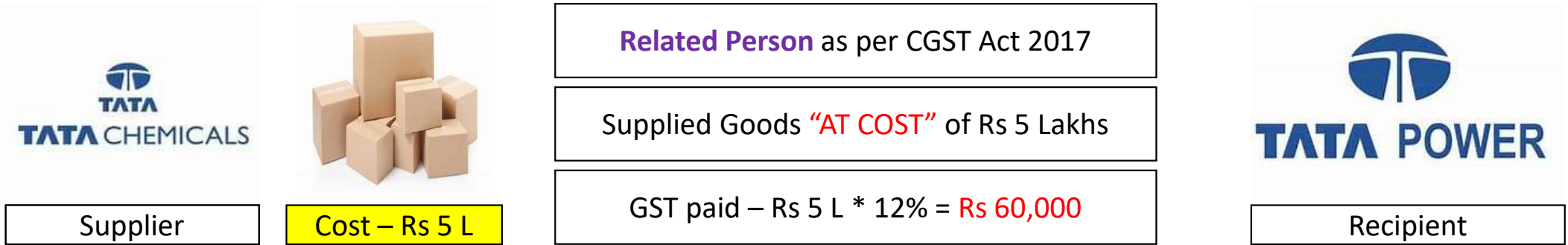
R.P. was **liable to pay**
GST @ 18%



Supplier

Have **"SHORT PAID TAX (GST) to the extent of 6%"** to GST Department

Example of Tax (GST) Short Paid.



Example of Wrong Availment and Utilization of Input Tax Credit.



What is the meaning of **Wrong Availment and Utilization** of Input Tax Credit?



Eligible Input Tax Credit

Rs 1,00,000

Erroneously Availed

Rs 10,00,000



Wrongly Availed and Utilized Input Tax Credit

of Rs 9 Lakhs.

Example of Wrong Availment or Utilization of Input Tax Credit.

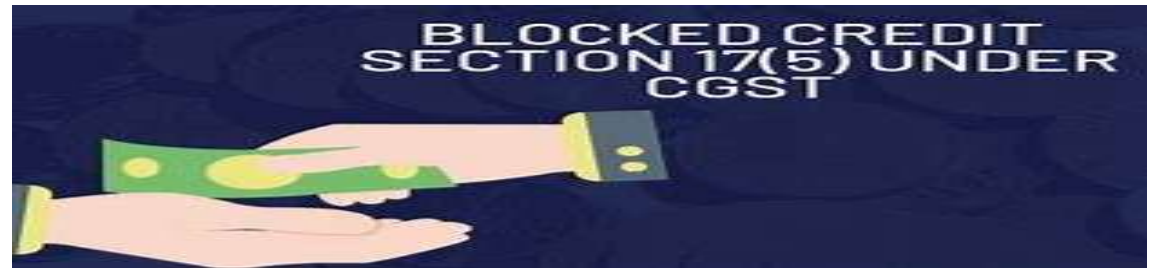


Registered Person



Purchased / Availed following Goods or Services or both – GST Paid – Rs 5 Lakhs

As per **Section 17 (5)** of CGST Act 2017, GST paid for above goods or services or both is



Registered Person

Wrongly Availed and Utilized Input Tax Credit

of Rs 5 Lakhs.

Example of Erroneous GST Refund.



Registered Person



Fake Shipping Bill



Registered Person

Erroneous GST Refund taken

of Rs 50 Lakhs.

Section 73 of CGST Act 2017.

Tax Not Paid, Short Paid, Excess Input Tax Credit and Erroneous Refund of Input Tax Credit **"BY REASONS OTHER THAN"** Fraud, Collusion, Willful Misrepresentation, Suppression of Facts, Contravention of Provisions of Act.

Case Study 1 – GST Paid Prior to Issue of Show Cause Notice (Section 73 of CGST Act 2017).



Availed /
Received for
Rs 1 Crore
Following
services



As per Section 9 (3) of
CGST Act 2017



Was liable to pay GST
under



Failed to pay GST
under Reverse Charge
Mechanism



Case of “NON FRAUD”

FORM GST DRC – 04*[See rule 142(2)]*

Reference No:

Date:

To

_____ GSTIN/ID

----- Name

_____ Address

Tax Period -----

F.Y. -----

ARN -

Date -

Acknowledgement of acceptance of payment made voluntarily

The payment made by you vide application referred to above is hereby acknowledged to the extent of the amount paid and for the reasons stated therein.

Signature

Name

Designation

As per Section 73 of CGST Act 2017, if



Registered Person

Pays GST Along with Interest @ 18% p.a.

Prior to the Issue of Show Cause Notice

then

Department **"SHALL NOT LEVY ANY PENALTY"**

Case Study 2 – GST Paid “WITHIN 30 DAYS” of Issuance of Show Cause Notice (Section 73 of CGST Act 2017).



Registered Person



Purchased / Availed following Goods or Services or both – **GST Paid – Rs 50 Lakhs**

As per **Section 17 (5)** of CGST Act 2017, GST paid for above goods or services or both is



Registered Person

Erroneously Availed such Blocked Credit of Rs 50 Lakhs



NON FRAUD CASES

Case Study: 2 – Continued.

GST DEPARTMENT



U/s 73 of CGST Act 2017

GST FORM DRC-01

01st December 2021



Registered Person



Registered Person



Rs 50 Lakhs along with Interest @ 18% p.a. through

FORM GST DRC - 03
(See rule 142(2)(b) & 142(3))
Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

1. GSTIN	14AIPR1512ZT2									
2. Name	RAJESH JAYSHIRKAR ANDRA									
3. Nature of Payment	Voluntary									
4. Section under which voluntary payment is made	7(3)(i) Voluntary									
5. Details of show cause notice, if payment is made within 30 days of its issue	Reference No. N/A (Date of issue: N/A)									
6. Financial Year	2017-2018									
7. Details of payment made including interest and penalty, if applicable (Amount in Rs.)	Sr. No.	Tax Period	Act	Place of supply (POS)	Intax	Penalty & interest payable	Total	Date of issue		
1	01/12/2017	GST	Karnataka	1,000.00	0	0	1,000.00	credit	01/09/2000000000	11/09/2018
8. Remarks, if any:										
9. Verification - I hereby declare that the information given above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.										
Signature of Authorized Signatory										

On 25th December 2021

"WITHIN 30 DAYS" of Issuance of SCN

GST DEPARTMENT

Summary of Show Cause Notice

As per **Section 73** of CGST Act 2017

If the Taxpayer, Registered Person pays GST along with Interest

"WITHIN 30 DAYS" OF THE ISSUE OF SHOW CAUSE NOTICE U/s 73

GST DEPARTMENT

Shall **"NOT LEVY"** any Penalty

Department shall issue **"ACKNOWLEDGMENT IN DRC – 05"**

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Signature
Name
Designation

FORM GST DRC- 05

[See rule 142(3)]

Reference No:

Date:

To

_____ GSTIN/ID

----- Name

_____ Address

Tax Period -----

F.Y. -----

SCN -

Date -

ARN -

Date -

Intimation of conclusion of proceedings

This has reference to the show cause notice referred to above. As you have paid the amount of tax and other dues mentioned in the notice along with applicable interest and penalty in accordance with the provisions of section ---- , the proceedings initiated vide the said notice are hereby concluded.

Signature
Name
Designation

As per Section 73 of CGST Act 2017, if





Pays GST Along with Interest @ 18% p.a.

Within 30 Days of the Issue of Show Cause
Notice

then

Department **"SHALL NOT LEVY ANY PENALTY"**

Case Study 3 – GST Paid After the Issuance of Order under DRC 07 (Section 73 of CGST Act 2017).

	Collected “ADVANCES” on Services on	Services to be supplied on	Tax Invoice to be issued on
	01 st December 2021	01 st August 2023	01 st August 2023
	Date of Issuance of Invoice	Or Receipt of Payment	Whichever is earlier
As per Section 12 of CGST Act 2017, Time of Supply for Issuance of Services is	01 st August 2023	01 st December 2021	
	Liable to pay GST on	LLP was going to pay GST on	NON FRAUD CASE

GST Department issued Notice in DRC 01 **on 1st April 2022**

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Case Study: 3 – Continued.

GST DEPARTMENT



U/s 73 of CGST Act 2017

GST FORM DRC-01

01st April 2022

Limited Liability Partnership

Limited Liability Partnership

"DID NOT PAY GST" within
30 Days of Issuance of SCN

GST DEPARTMENT

Issued an Order in
"GST FORM DRC 07"

Limited Liability Partnership

Paid GST **after the receipt** of
Order in DRC 07

GST DEPARTMENT

GST DEPARTMENT

SHALL LEVY PENALTY

Rs 10,000 or

10% of Tax (GST)
Amount

Whichever is **"HIGHER"**

Limited Liability Partnership

As per Section 73 of CGST Act 2017, if



Registered Person

Pays GST Along with Interest @ 18% p.a.

After 30 Days of the Issue of Show Cause
Notice or after issuance of Order under
DRC 07

then



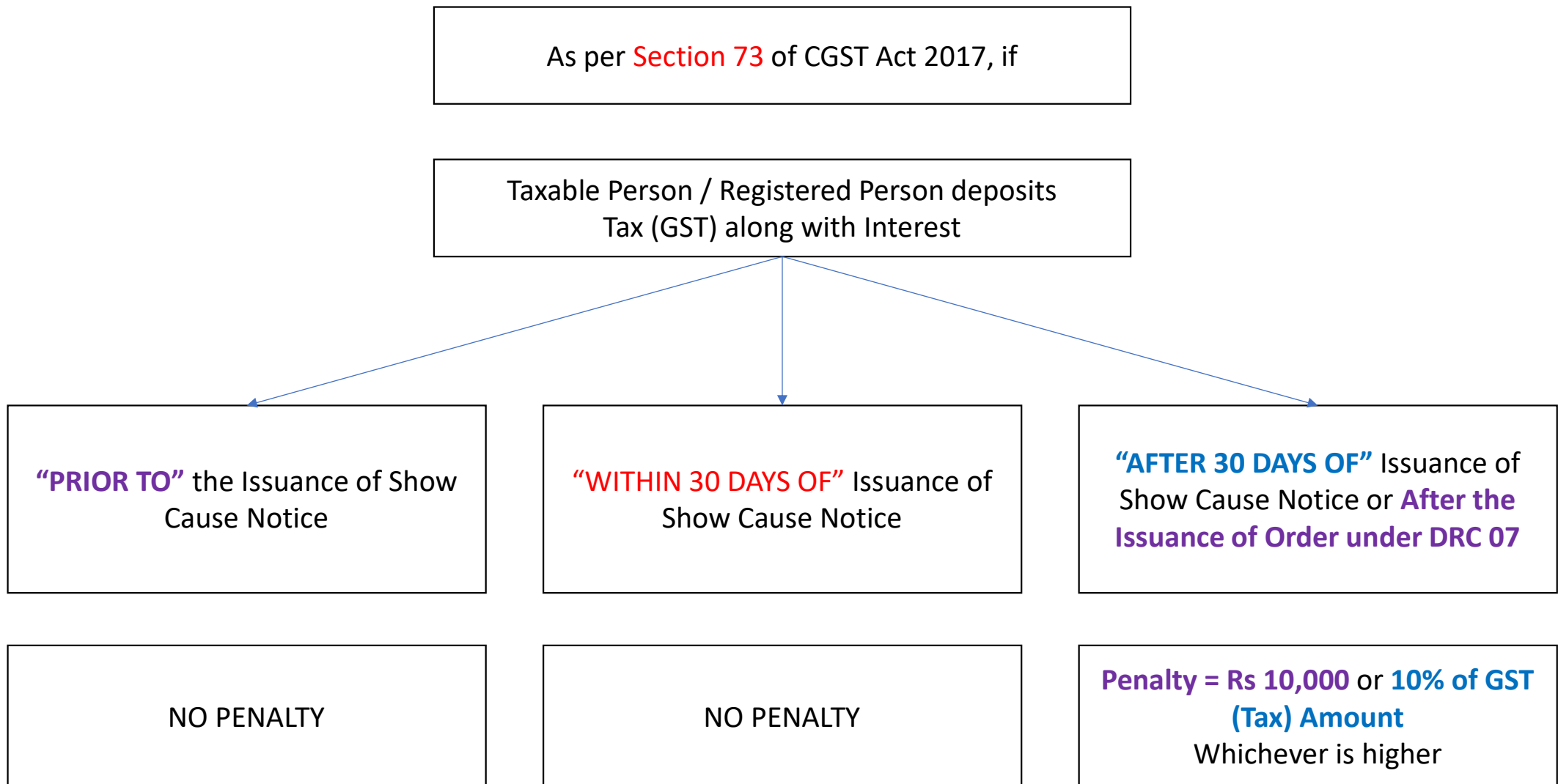
SHALL LEVY PENALTY

Rs 10,000 or

10% of Tax (GST)
Amount

Whichever is "HIGHER"

Summary of Section 73 of CGST Act 2017.



TEST YOUR KNOWLEDGE

Case Study: 4.



ABC Classes



ABC Classes



Solution

Collected Fees
of Rs 10 Crores

Assumed Exempt under GST as
per Entry No 66 of GST
Exemption Notification No 2017

Did Not pay GST

NON FRAUD

GST
ASMT-10

Classes are “NOT” an
Educational Institute
as per Entry No 66

GST Exemption is

“NOT AVAILABLE”

Paid GST of Rs 1.8 Crores
(10 Cr * 18%) along with
Interest

“PRIOR TO” Issuance of
Show Cause Notice u/s 73
of CGST Act 2017



What shall be the Penalty Payable by ABC Classes?

Since Registered Person has
paid GST along with Interest

“PRIOR TO THE” Issuance of Show
Cause Notice

He shall
“NOT BE SUBJECTED”
to any Penalty

Case Study: 5.

HUF

GST DEPARTMENT

HUF

Supplied



Applicable GST Rate

18%

Erroneously collected and paid GST @

12%



U/s 73 of CGST Act 2017

GST FORM DRC-01
01st January 2022

Demand Tax (GST) Amount
= Rs 50 Lakhs

Paid GST along with Interest on
31st March 2022

After 30 Days of Issuance of SCN

GST DEPARTMENT



What shall be the **Penalty Payable** by HUF?

Solution

Since HUF paid GST **after 30 Days** of Issuance of SCN

GST DEPARTMENT

SHALL LEVY PENALTY

Rs 10,000 or 10% of Rs 50 L
= Rs 5 Lakhs
Whichever is **"HIGHER"**

Penalty
= Rs 5 Lakhs

Case Study: 6.



Registered Person



GST Paid – Rs 20,000



Erroneously Availed
Input Tax Credit

NON FRAUD



U/s 73 of CGST Act 2017

GST FORM DRC-01

01st January 2022

Demand Tax (GST) Amount

= Rs 20,000



Registered Person

Paid GST along with
Interest on
1st April 2022

After 30 Days of
Issuance of SCN



What shall be the
Penalty Payable by
Registered Person?

Solution

Since R.P. paid GST after 30
Days of Issuance of SCN



SHALL LEVY
PENALTY

Rs 10,000 or

10% of Rs 20 K
= Rs 2,000

Whichever is "HIGHER"

Penalty

= Rs 10,000

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Case Study: 7



Taxable Person

Non Payment of GST–

Rs 5 Crores

01st April 2021

01 April 2021



Proper Officer



Issued SCN u/s 73

30th April 2022

order.

30th July 2022



Taxable Person

Paid GST to govt on

10th December

2022

(After 30 Days of Order)



Calculate Interest and Penalty payable u/s 73 of CGST Act 2017?

Interest shall be calculated @ 18% p.a. from the

“Date of Non Payment of Tax (GST) till the Date of Payment of Tax (GST)”

Non Payment on

Tax Deposited on

No of Days =

619 Days

Interest =
 $\text{Rs 5 Crores} * 18\% * 619 / 365$

Rs 1.52 Crores

Penalty

Rs 10,000 or

10% of Rs 5 Crs
= Rs 50 Lakhs

Whichever is **“HIGHER”**

Penalty

= Rs 50 Lakhs

Section 73 (10) read with Section 73 (2) of CGST Act 2017.
Time Limit for Issuance of Show Cause Notice and
Order under DRC 07.

Section 73 (10) of CGST Act 2017.
Time Limit for Issuance of Order under DRC 07.

Section 73 (10) of CGST Act 2017 – Time Limit for Issuance of Order (DRC 07).



Registered Person

Availed Blocked ITC –
Rs 50 Lakhs

GST Return of Dec 2021

GST Return of Dec 2021



Proper Officer



Registered Person

R.P. Did not pay
GST within 30 Days
of Issuance of SCN



What is the Time limit for the Issuance of Order (DRC – 07)?

Solution

As per Section 73 (10)
of CGST Act 2017

Order (DRC – 07) for Non Fraud
Case is to be issued

Within 3 Years

From the Due Date of filing Annual
Return for the financial year to
which such wrong ITC availed relates

FY : 2021 - 22

Due Date of filing Annual Return is

31st December 2022

Order is to be issued
within 3 years from
the due date of filing
annual return

+ 3 Years

31st December 2025

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Case Study 1 - Section 73 (10) of CGST Act 2017 – Time Limit for Issuance of Order (DRC 07).



Registered Person

Short Payment of GST



Proper Officer



Registered Person

R.P. **Did not pay**
GST **within 30 Days**
of Issuance of SCN

GST Return of **Apr 2023**



What is the Time limit for the Issuance of Order (DRC – 07)?

Solution

As **per Section 73 (10)**
of CGST Act 2017

Order (DRC – 07) for **Non Fraud**
Case is to be issued

Within 3 Years

From the **Due Date of filing Annual**
Return for the financial year to
which such wrong ITC availed relates

FY : 2023-24

Due Date of filing Annual Return is

31st December 2024

Order is to be issued
within 3 years from
the due date of filing
annual return

+ 3 Years

31st December 2027

Section 73 (2) of CGST Act 2017.
Time Limit for Issuance of Show Cause Notice.

Section 73 (2) of CGST Act 2017 – Time Limit for Issuance of Show Cause Notice.



Registered Person

Non Payment of GST

GST Return of March 2022

R.P. did not pay GST

“PRIOR TO ISSUANCE OF
SCN”



What is the **Time Limit**
for Issuance of SCN?

Solution

As per Section 73 (2)
of CGST Act 2017



Is to be Issued
“ATLEAST 3 MONTHS”
“PRIOR TO”

Time Limit u/s 73 (10) specified for
“PASSING THE ORDER (DRC – 07)”

FY : 2021 - 22

Due Date of filing Annual Return is

31st December 2022

As per Section 73 (10)
of CGST Act 2017,
Order to be issued by

+ 3 Years

31st December 2025

Hence SCN is to be
issued by

Less: 3 Months

30th September 2025

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Case Study : 1 - Section 73 (2) of CGST Act 2017 – Time Limit for Issuance of Show Cause Notice.



Registered Person

Availed Blocked Input Tax Credit

GST Return - June 2023

R.P. did not pay GST

"PRIOR TO ISSUANCE OF SCN"



What is the **Time Limit** for Issuance of SCN?

Solution

As **per Section 73 (2)** of CGST Act 2017



Is to be Issued
"ATLEAST 3 MONTHS"
"PRIOR TO"

Time Limit u/s 73 (10) specified for
"PASSING THE ORDER (DRC – 07)"

FY : 2023 - 24

Due Date of filing Annual Return is

31st December 2024

As **per Section 73 (10)** of CGST Act 2017,
Order to be issued by

+ 3 Years

31st December 2027

Hence **SCN** is to be issued by

Less: 3 Months

30th September 2027

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Case Study : 2 - Section 73 (2) of CGST Act 2017 – Time Limit for Issuance of Show Cause Notice.



Registered Person

Short Payment of GST

GST Return – Apr 2022



Proper Officer



31/10/2026



Whether Dept has issued SCN **within time limit** specified u/s 73 (2) of CGST Act 2017?

Solution

FY : 2022 - 23

Due Date of filing Annual Return is

31st December 2023

As **per Section 73 (10)** of CGST Act 2017,
Order to be issued by

+ 3 Years

31st December 2026

Hence **SCN** is to be issued by

Less: 3 Months

30th September 2026



Proper Officer



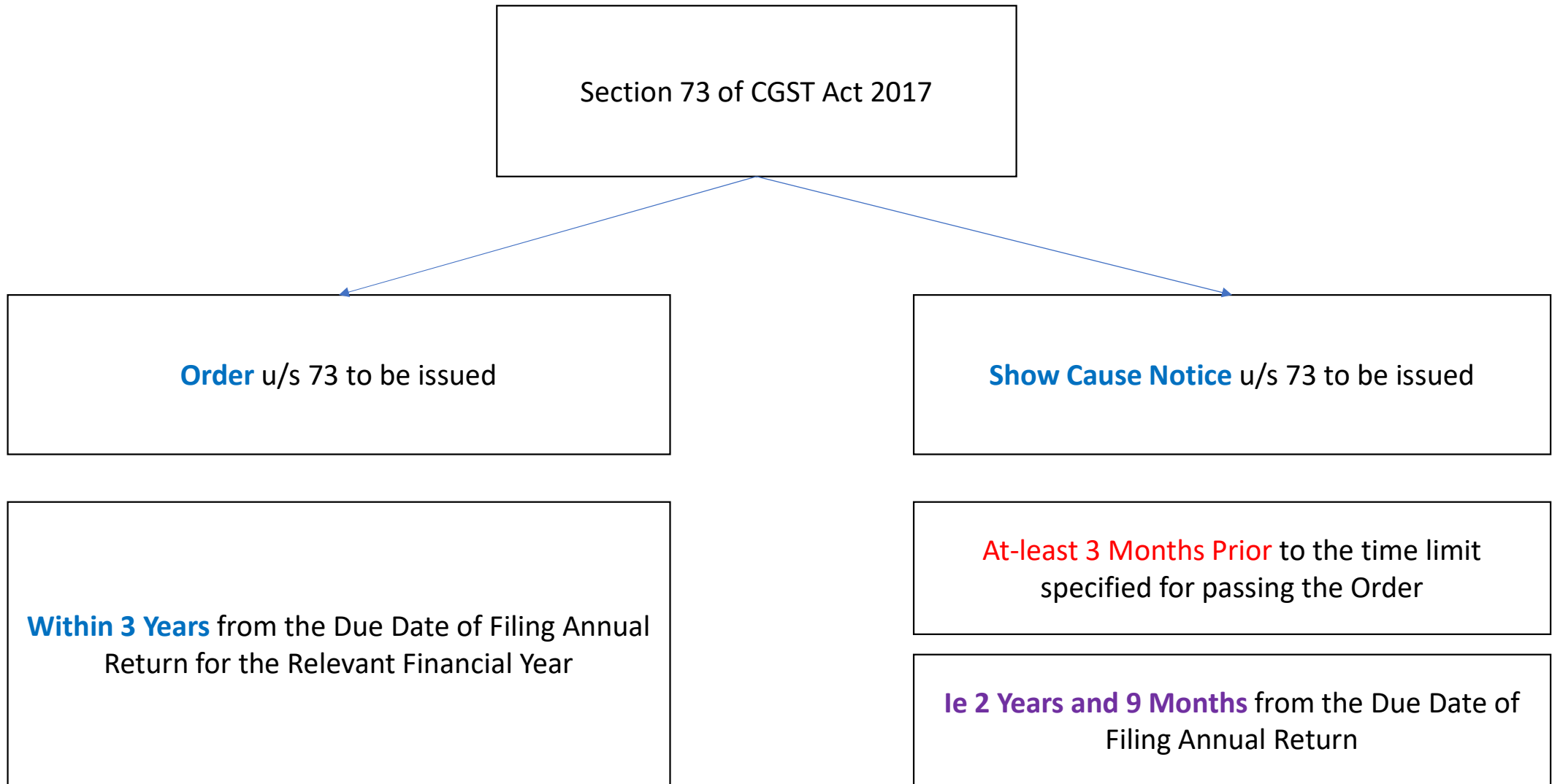
31st October 2026

le After the Time Limit
u/s 73 (2) of CGST Act
2017



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Summary.



Section 73 & 74 of CGST Act 2017.
Frequently Asked Question and Case Studies

Case Studies and FAQ: 1.



In which form officer shall send Show Cause Notice u/s 73 or 74 of CGST Act 2017



Proper Officer

P.O. shall issue Show Cause Notice in **Form GST DRC – 01**



Taxable Person

[FORM GST DRC - 01
[See rule 100 (2) & 142(1)(a)]

Reference No:

Date:

To

_____GSTIN/Temp. ID

----- Name

_____Address

Tax Period -----

F.Y. -----

Act -

Section / sub-section under which SCN is being issued -

Case Studies and FAQ: 2.



In which form Taxable Person shall make payment of GST to department?



Taxable Person

Taxable Person shall make GST payment in

Form GST DRC – 03

Form GST DRC – 03 shall be used for all cases

Government / GST
Department

If Taxable Person pays
Tax **"PRIOR TO ISSUANCE
OF SCN"**

If Taxable Person pays
Tax **"WITHIN 30 DAYS OF
ISSUANCE OF SCN"**

If Taxable Person pays
Tax **"WITHIN 30 DAYS OF
ISSUANCE OF ORDER"**

If Taxable Person pays
Tax **"AFTER 30 DAYS OF
ISSUANCE OF ORDER"**

Case Studies and FAQ: 3.



In which form P.O. shall issue Acknowledgment if Taxable Person pays GST **prior to issuance of show cause notice?**



Taxable Person

Pays GST prior to Issuance of SCN

U/s 73 of CGST Act 2017

No Penalty

U/s 74 of CGST Act 2017

Penalty =
15% of Tax Amount



Proper Officer

As per Rule 142 (2) of CGST Rules 2017
P.O. shall issue Acknowledgement in **Form GST DRC – 04**



Taxable Person

FORM GST DRC – 04

[See rule 142(2)]

Reference No:

Date:

To

_____ GSTIN/ID

----- Name

_____ Address

Tax Period -----

F.Y. -----

ARN -

Date -

Acknowledgement of acceptance of payment made voluntarily

Case Studies and FAQ: 4.



In which form P.O. shall issue **Intimation of Conclusion of proceedings** if Taxable Person pays GST **within 30 Days of issuance of show cause notice?**



Taxable Person

Pays GST within 30 days of
Issuance of SCN

U/s 73 of CGST Act 2017

No Penalty

U/s 74 of CGST Act 2017

Penalty =
25% of Tax Amount



Proper Officer

As per Rule 142 (3) of CGST Rules 2017
P.O. shall issue Intimation of Conclusion of proceedings in
Form GST DRC – 05



Taxable Person

FORM GST DRC- 05

[See rule 142(3)]

Reference No:

Date:

To

_____ GSTIN/ID
----- Name
_____ Address

Tax Period -----

F.Y. -----

SCN -

Date -

ARN -

Date -

Intimation of conclusion of proceedings

This has reference to the show cause notice referred to above. As you have paid the amount of tax and other dues mentioned in the notice along with applicable interest and penalty in accordance with the provisions of section ---- , the proceedings initiated vide the said notice are hereby concluded.

Section 75 of CGST Act 2017.

General Provisions relating to Determination of Tax (GST).

Section 75 (1) of CGST Act 2017 - Period of stay order to be excluded in computing the limitation period.



Reg Person



FY – 2021-22



Proper Officer

Order to be issued **"within 5 Years"** from the Due Date of Filing Annual Return of FY 2021 - 22

Annual Return for FY 21-22 to be filed by **31/12/2022**

Order to be issued by **31/12/2027**

Time Limit for Issue of Show Cause Notice under Section 74 is

"Atleast 6 Months" Prior to Time Limit of Passing Order u/s 74 (10)

SCN to be issued by **30/06/2027**



Proper Officer



Issued on **20/06/2027**



Reg Person



Filed on 21/06/2017
Challenging Validity of SCN



High Court of Bombay



High Court of Bombay



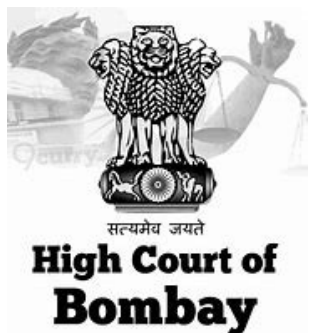
Till 20/06/2018 (1 Year)

Order **Cannot be Issued** till the Period of Stay Issued ie 20/06/2028.



Proper Officer

Section 75 (1) of CGST Act 2017 - Period of stay order to be excluded in computing the limitation period.



Verdict of Writ Petition on
20/06/2028



Verdict came that Show
Cause Notice **is Valid**

However, Proper Officer was liable
to issue Order u/s 74 (10) of CGST
Act 2017 by

31/12/2027



Whether P.O. may issued Order **after 31/12/2027?**

Solution

As per Section
75 (1) of CGST
Act 2017

Where the service of
notice or issuance of
order is stayed by an
order of a



Period of such stay shall be
(21/06/2017 to 20/06/2018) - 1 Year
"EXCLUDED"

While Computing the period for Issuance
of notice and Issuance of adjudication
order (3 Years or 5 Years), as the case
may be.

Order was to be Issued by

Stay by Court was issued till

1 Year

Period of Stay ie
1 year shall be
excluded

Hence Order may be issued till

31/12/2028

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Section 75 (10) of CGST Act 2017 - Adjudication order to be issued mandatorily within stipulated time.



Reg Person



FY – 2021-22



Proper Officer

Order to be issued **“within 5 Years”**
from the Due Date of Filing Annual
Return of FY 2021 - 22

Order to be issued by **31/12/2027**

Time Limit for Issue of Show Cause
Notice under Section 74 is **“Atleast
6 Months”** Prior to Time Limit of
Passing Order u/s 74 (10)

SCN to be issued by **30/06/2027**



Proper Officer



Issued on **20/06/2027**

WITHIN TIME LIMIT

order.

Issued on **10/01/2028**

AFTER TIME LIMIT



Reg Person

Solution



Whether P.O. may issued Order **after Time Limit**
Specified u/s 73 (3 Years) or u/s 74 (5 Years)?

As per Section 75 (10) of CGST
Act 2017

If Order is **not issued** within Time
Limit specified u/s 73 (10) or
under 74 (10) then

Adjudication Proceedings shall be
“DEEMED TO BE CONCLUDED”

Conclusion – Order issued by Proper Officer on 10/01/2018 (After Time Limit) shall be Invalid.

Section 75 (2) of CGST Act 2017 – Charges of FCWSP are “NOT ESTABLISHED” for a Notice of FCWSP issued u/s 74.



Short Payment
of GST

Non Fraud Cases

R.P

Apr 2021

Order to be **issued**
u/s 73 within 3 Years
from Due date of
filing A.R. of 21-22

Order by 31/12/2025
Order by 31/12/2025



proper Officer



U/S 74

20/06/2027

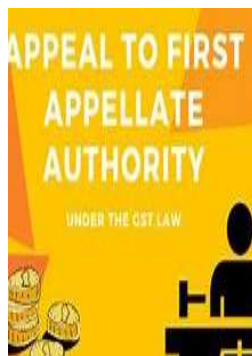
order.

Issued on **30/12/2027**

Within Time Limit of 5 Years



R.P



Authorities
held that

ORDER TO BE ISSUED U/S
73 (NON FRAUD) of CGST
Act 2017 ie

Within 3 Years from Due
date of filing A.R. of 21-22



Whether Order issued “**U/S 74 (FCWSP)**” issued on
30/12/2027 shall be Valid?

Section 75 (2) of CGST Act 2017 – Charges of FCWSP are “NOT ESTABLISHED” for a Notice of FCWSP issued u/s 74.

Solution

As per Section
75 (2) of CGST
Act 2017



Where Above Authorities concludes that

The notice issued
under section 74(1)
is
“NOT SUSTAINABLE”

for the reason that the
charges of FCWSP to evade
tax has
“NOT BEEN ESTABLISHED”
against the person to
whom the notice was
issued, then

Proper Officer shall determine the tax payable by such person, **deeming as if the notice were issued under section 73(1).**

order.

To be Issued within 3 Years u/s 73

ie by 31/12/2025

Hence Proceeding
shall be
Deemed to be
concluded on

31/12/2025

order.

Issued within 5 Years u/s 74

On 30/12/2027

Order issued on
30/12/2027 shall be

“INVALID”

Section 75 (4) of CGST Act 2017 – Opportunity of Being Heard.



Proper Officer

Contemplating Adverse Decision against
Registered Person u/s 73 or 74 of CGST
Act 2017

Requested in writing for
Opportunity of Being Heard



Taxable Person



Whether Proper Officer can grant opportunity of being heard?

Solution

As per Section 75 (4)
of CGST Act 2017

If Taxable Person has
“REQUESTED IN WRITING”

OR

Where “ADVERSE DECISION IS
CONTEMPLATED” against Taxable
Person

Then Proper Officer **shall be required** to grant Opportunity of Being Heard.

If Favorable order is contemplated then Opportunity of Being Hear shall not be granted

Section 75 (5) of CGST Act 2017 – Adjournment of hearing to grant time to person chargeable with tax.



Proper Officer

Contemplating Adverse
Order against

Opportunity of Being
Heard granted on

15/12/2021



Taxable Person

On 15/12/2021,
**Requested for 1st
Adjournment** of Hearing



Proper Officer



Upto

20/01/2022



Taxable Person

On 20/01/2022,
**Requested for 2nd
Adjournment** of Hearing



Proper Officer



Upto

10/02/2022



Taxable Person

On 10/02/2022,
**Requested for 3rd
Adjournment** of Hearing



Proper Officer



Upto

31/03/2022



Taxable Person

On 31/03/2022,
**Requested for 4th
Adjournment** of Hearing



How many times Proper Officer may adjourn hearing?

Section 75 (5) of CGST Act 2017 – Adjournment of hearing to grant time to person chargeable with tax.

Solution

As per **Section 75 (5)** of
CGST Act 2017



Proper Officer

Adjournment shall be granted for a

“MAXIMUM OF 3 TIMES”

to a person during the
proceedings.

After 3rd Adjournment of meeting, if Taxable Person does not appear then P.O. may complete proceedings on basis of

“AVAILABILITY OF RECORDS WITH PROPER OFFICER”



Section 75 (7) of CGST Act 2017 - Tax, Interest and Penalty demanded in order **not to exceed** amount specified in notice.



Proper Officer



Demand = Rs **5 Lakhs**

order.

Demand = Rs **6 Lakhs**



Taxable Person

Solution



Whether P.O. may **Modify / Change/ Amend Tax, Interest** or Penalty Amount as specified in Notice in Final Order?

As per **Section 75 (7)** of CGST Act 2017

The amount of tax, interest and penalty **"DEMANDED IN THE ORDER"**

"SHALL NOT BE IN EXCESS OF" of the amount **"SPECIFIED IN THE NOTICE"**

Hence P.O. can issue maximum demand of Rs 5 Lakhs in his Order u/s 73 (10) or 74 (10) as case may be

Also demand shall Not be confirmed on the grounds **other than the grounds specified in the notice.**

Section 75 (8) of CGST Act 2017 - Modification of tax by the Appellate Authority / Tribunal / Court.



Proper Officer

order.

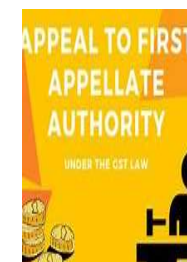
Tax –
Rs 1 L

Int –
Rs 15 K

Penalty –
Rs 18K



Taxable Person



Modified / Changed / Amended Demand Order issued by P.O.

Tax Amount – Rs 50,000

Solution



Whether **Interest & Penalty shall be modified** for modification in Tax Amount by the Appellate Authority/Tribunal/Court?

As per **Section 75 (8)** of CGST Act 2017

Where the Appellate Authority or Appellate Tribunal or court
“MODIFIES AMOUNT OF TAX (GST)”
determined by the proper officer

the amount of Interest and Penalty shall stand modified accordingly,
taking into account the amount of tax so modified.

In the given case, since Tax amount is reduced, Interest and Penalty shall be reduced accordingly.

Section 75 (9) of CGST Act 2017 - Payment of interest mandatory even if not specified in the adjudication order.



Proper Officer

order.

Demand of Tax – Rs 5 Lakhs

P.O. **“FAILED TO MENTION”** about
applicability of Interest @ 18% p.a.



Taxable Person



Whether Taxable Person shall be required to pay Interest if
Interest is **“NOT SPECIFIED IN ADJUDICATION ORDER”**?

Solution

As per **Section 75 (9)**
of CGST Act 2017

Taxable Person **“SHALL BE LIABLE”** to
pay Interest u/s 50 of CGST Act 2017
@ 18% per annum

**Even if / Irrespective of the fact that it
is not specified in adjudication order**

Conclusion – Liability to pay Interest is **“AUTOMATIC”**.

However Proper Officer shall be required to **“SPECIFY PENALTY IN NOTICE”** if applicable.

Section 75 (11) of CGST Act 2017 - Amount of self-assessed tax or interest remaining unpaid to be recovered under section 79.



Proper Officer

order.

Demand of Tax & Interest – Rs 50 Lakhs

Taxable Person **“DID NOT HAVE FUNDS”**

Amount of Tax and Interest payable on such tax **remains unpaid**,



Taxable Person



How Proper Officer shall recover such amount from Taxable Person?

Solution



Proper Officer

Shall Initiate



Recovery Proceedings u/s 79 of CGST Act 2017

We shall cover Section 79 of CGST Act 2017 in detail when we cover topic of Recovery Proceedings u/s 79.

Section 75 (13) of CGST Act 2017 – Penalty cannot be imposed under other section where penalty is imposed u/s 73 or 74.



Proper Officer

GST PENALTY

Introduced **Penalty u/s 73 or 74**
of CGST Act 2017

Also, P.O. proposes to introduce penalty for
“SAME ACT / OMISSION” under

Section 122 of CGST Act
2017 as well as

Section 125 of CGST Act 2017



Whether Proper Officer may impose penalty
under other sections
“FOR SAME ACT OR OMISSION”?

For which **penalty is already introduced** u/s 73
or 74 of CGST Act 2017?

Solution

As per **Section 75
(13)** of CGST Act
2017

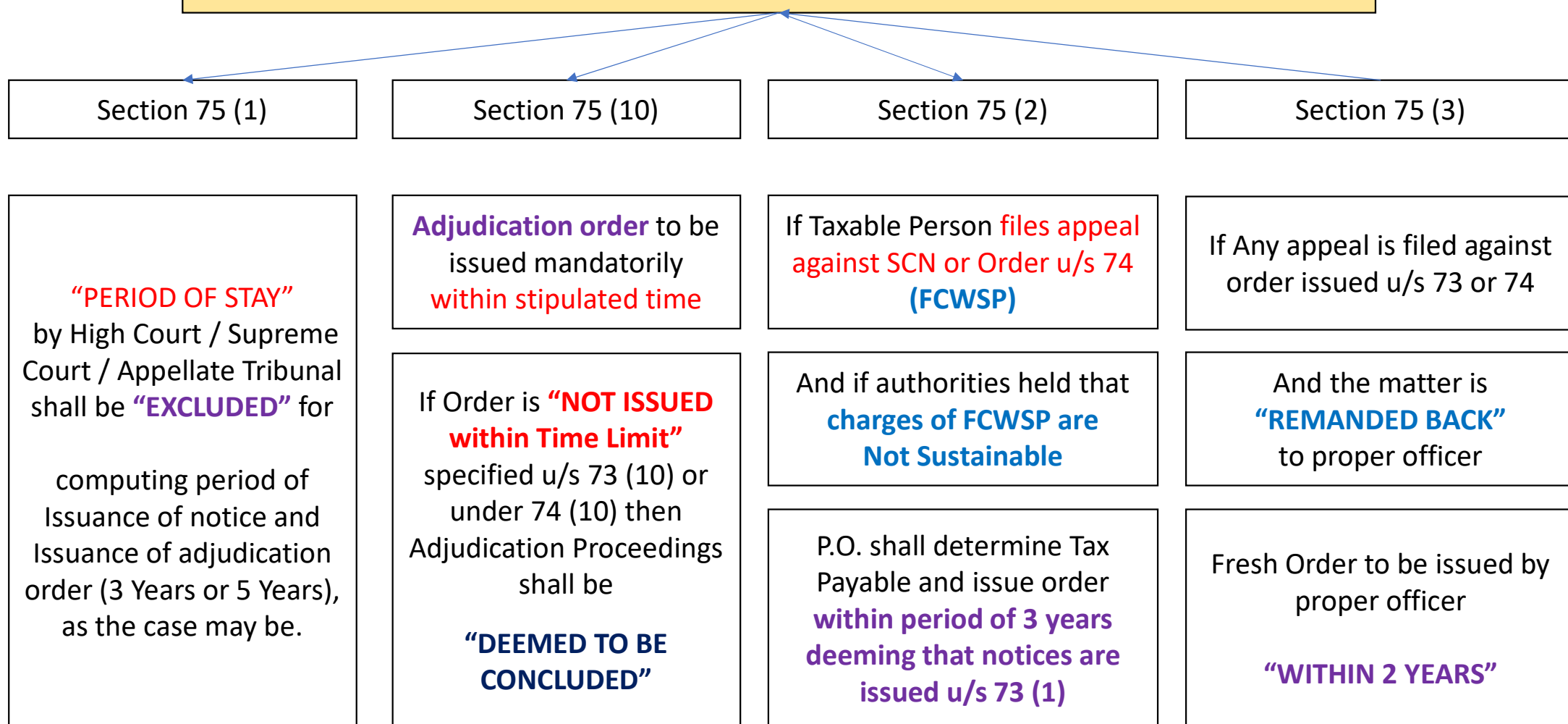
Where any penalty is imposed under
section 73 or section 74

**“NO PENALTY FOR THE SAME ACT OR
OMISSION SHALL BE IMPOSED”**

on the same person under any other
provision of this Act.

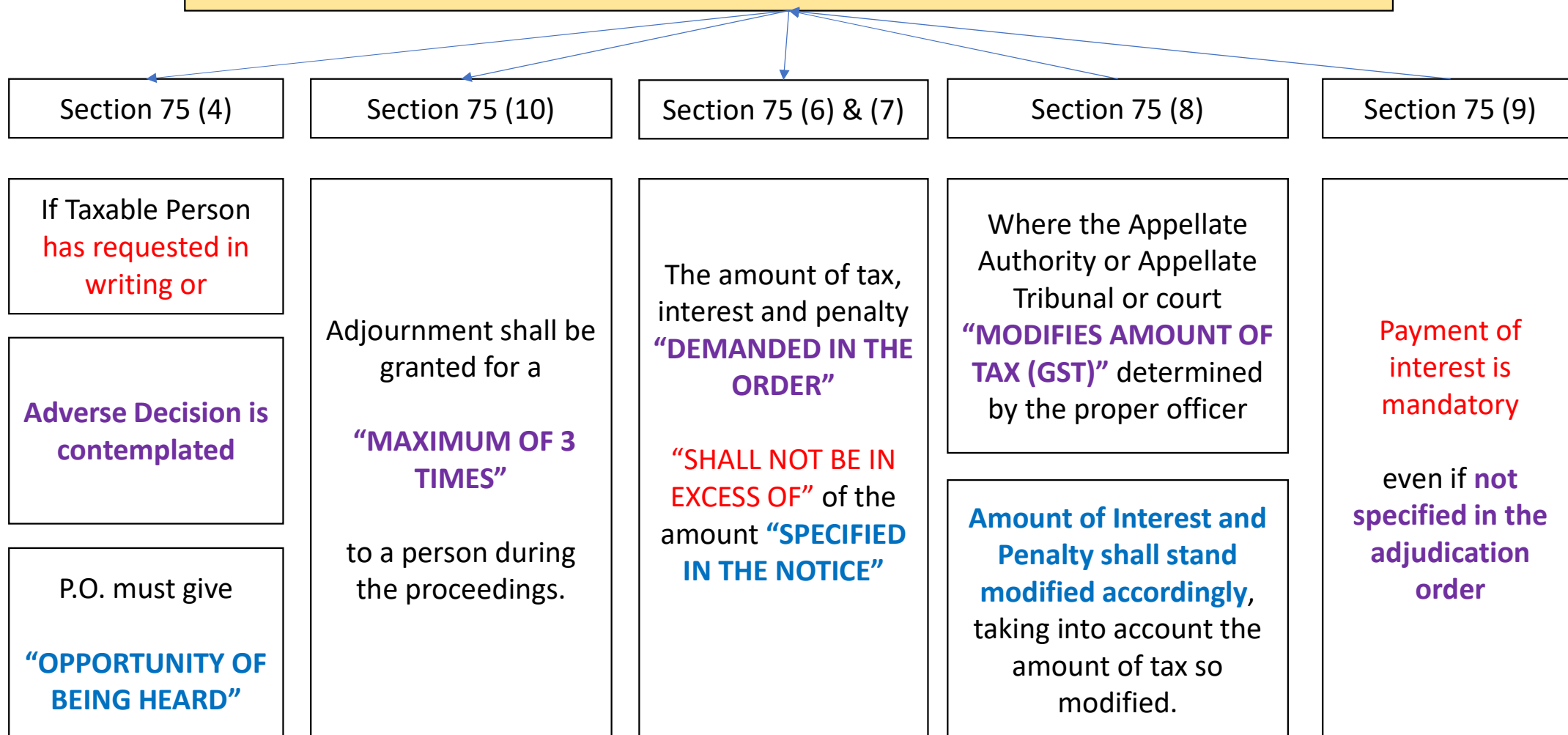
Summary / Revision of Section 75 of CGST Act 2017.

Section 75 of CGST Act 2017 – General Provisions relation to Determination of Tax



Summary / Revision of Section 75 of CGST Act 2017.

Section 75 of CGST Act 2017 – General Provisions relation to Determination of Tax



Section 76 of CGST Act 2017.

Section 76 of CGST Act 2017 - Tax (GST) Collected but not deposited.

Section **73 and 74** of CGST Act 2017

Taxable Person has **"NOT COLLECTED TAX"** from Recipient as well as

Taxable Person has **"NOT PAID TAX"** to Government

Example



Supplier

Supplied Goods of Rs 10 Lakhs

Assumed **"EXEMPT"**

Supplier **"DID NOT COLLECT"** Tax

Later supplier identified that Goods were **"TAXABLE"** ie Tax is Not Paid on supply of such goods.

So Taxable Person has **"NOT COLLECTED TAX"**

As well as Taxable Person has **"NOT PAID TAX"**

Section **76** of CGST Act 2017

Taxable Person has **"COLLECTED TAX"** from Recipient but

Taxable Person has **"NOT PAID TAX"** to Government

Example



Supplier

Supplied **Exempt Goods** of Rs 10 Lakhs

Fraudulently Collects GST of Rs 30 Lakhs for supply of such exempt goods

Taxable Person **"DOES NOT PAY TAX (GST)"** to government as goods / services are exempt

So Taxable Person has **"COLLECTED TAX"**

But Taxable Person has **"NOT PAID TAX"**

Case Study: 1 (Universal Engineering V/s Addnl Commissioner, ST 1982, MP, WN 261.



Supplier

Supplied



Rs 20 Lakhs

GST Collected

Rs 3.6 Lakhs



Rs 36 Lakhs

Recipients



Rs 36 Lakhs

Supplier



Availed

Opinion –

“GST IS EXEMPT” for
supply of such goods

GST Collected was
“REFUNDED BACK” to
the Recipients



Solution



Whether Department **may issue Show Cause
Notice u/s 76** as Tax Collected but not deposited?



In given case, Supplier has refunded
GST to the Recipients

Spirit of Provision is that Collected means GST collected
and **“KEPT AS HIS”** by such Taxable Person

GST Department **“CANNOT ISSUE”** Show Cause Notice u/s 76

Case Study: 2



Reg Person



Goods on **"CREDIT"**

Erroneously Issued

TAX INVOICE

Rs 1.12 Cr (1Cr + 12% GST)

Later for GST Component of
Rs 12 Lakhs, Issued

Credit Note

Hence Rec paid only Rs 1 Cr



Rs 1 Crore

Recipients



Whether Department **may issue Show Cause
Notice u/s 76?**

As GST Component was **"NEVER COLLECTED"** from
Recipients

Solution

Amount billed **"DOES NOT RESULT"** to Amount collected

Indicating an Amount in the Invoice **"DOES NOT MEAN"**
that Tax (GST is collected)

In the given case, Supplier has issued
"CREDIT NOTE" for GST Component

Recipient has paid only
Rs 1 Crore

GST of Rs 12 Lakhs
"WAS NEVER COLLECTED"

GST Department **"CANNOT ISSUE"** Show Cause Notice u/s 76

Case Study: 3



Supplier



Turnover below Rs 20 Lakhs



Supplied Goods of Rs 5 L



Collected GST – Rs 90 K



Recipients



Whether Department **may issue Show Cause Notice u/s 76** as Tax Collected but not deposited?

Solution



As per Section 76 (2) of CGST Act 2017



Proper Officer



Issue SCN u/s 76

Requiring him to Show Cause **for payment of specified amount (Rs 5 L) "ALONG WITH INTEREST @ 18% p.a."**



Taxable Person



Proper Officer

After Considering representation if any from Taxable Person, P.O. shall determine

Amount Payable by Taxable Person along with Interest

Penalty shall also be levied **@ 100% of Tax Amount**



Taxable Person

Section 76 - Consequences of Tax (GST) Collected but not paid / deposited

```
graph TD; A[Section 76 - Consequences of Tax (GST) Collected but not paid / deposited] --> B[Section 76 (2)]; A --> C[Section 76 (3)]; A --> D[Section 76 (4)]; A --> E[PENALTY]; B --> B1[Show Cause Notice]; C --> C1[Tax (GST) Collected but not paid shall be liable to be paid / deposited]; D --> D1[Interest payable @ 18% from the DATE OF COLLECTION till the DATE OF ACTUAL PAYMENT]; E --> E1[100% of Tax (GST) Amount];
```

Section 76 (2)

Show Cause
Notice

Section 76 (3)

Tax (GST) Collected
but not paid shall be
**liable to be paid /
deposited**

Section 76 (4)

Interest payable @
18% from the **“DATE
OF COLLECTION”** till
the **“DATE OF
ACTUAL PAYMENT”**

PENALTY

100% of Tax (GST)
Amount

Case Study: 4



Supplied Petrol / Diesel

NON Taxable

Non Taxable / Non GST



Collected GST – Rs 2 Crores
fraudulently in Dec 2021



Rs 1 Crore



Recipients



Since GST is **“NOT APPLICABLE”** on
Petrol and Diesel

GST Collected of Rs 2 Crores
“WAS NEVER PAID / DEPOSITED” with



Traced such transaction
in **“APRIL 2030”**
(After 9 Years)



What is the **“TIME LIMIT”**
for Issuance of SCN u/s 76?

Can Dept issue notice of FY
2021-22 in April 2030?

Solution

SCN under Section 76
(2) of CGST Act 2017

“DOES NOT PROVIDE”
for any time limit

For Issuance of SCN

**NOTICE MAY BE ISSUED
ANYTIME**

Conclusion – GST Department is **“ELIGIBLE TO ISSUE SCN”** of FY 2021-22 in April 2030.

Case Study: 5



Alcohol is Outside
the Scope of GST
Law



Collected GST – Rs 1 Crore
fraudulently in August 2021



Recipients



Proper Officer



Issue SCN u/s 76

01/04/2022
01/04/2022

As SCN u/s 76 may be issued
anytime

(No Time Limit)



Solution



What is the time limit for **“ISSUANCE OF ORDER”**
against SCN u/s 76?

As per Section 76 (6) of
CGST Act 2017

Order against SCN u/s 76
shall be issued

“WITHIN 1 YEAR” from the Date of
Issuance of SCN



+ 1 Year

Order must be issued by
“31st March 2023”

There is **“NO TIME LIMIT”** for issuance of SCN

But Order against SCN u/s 76 must be issued
“WITHIN 1 YEAR” from the date of Issuance of SCN.

Case Study: 6



Builders

Supplied Flats
after the
Receipt of



As per Sch III,
GST is
NOT APPLICABLE



Collected GST – Rs 10 Crores
fraudulently in April 2022



Proper Officer



Issued on **30/09/2022**

Order to be issued
within 1 year from
date of SCN

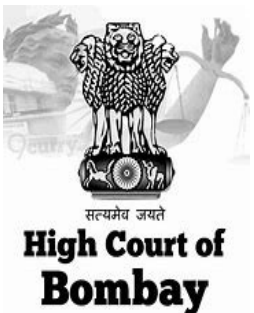
30/09/2023



Builders



01/10/2022



Upto **September 2024 (2 Years)**

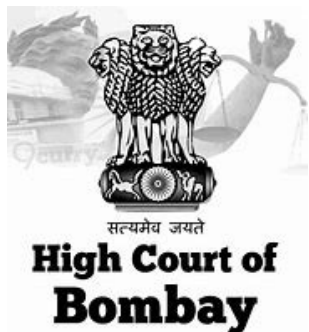
Order **Cannot be Issued** till the Period
of Stay Issued ie **30/09/2024**

(30/09/2022 + 2 Years)



Proper Officer

Case Study: 6 – Continued,



Verdict of Writ Petition on
30/09/2024



Verdict came that Show
Cause Notice **is Valid**

However, Proper Officer was liable
to issue Order u/s 76 (6) of CGST
Act 2017 by

30/09/2023



Whether P.O. may issued Order **after 30/09/2023?**

Solution

As per **Section 76** of CGST Act
2017

Where the service of
notice or issuance of
order is stayed by an
order of a



Period of such stay shall be
(01/10/2022 to 30/09/2024) - 2 Years
"EXCLUDED"

While Computing the period for Issuance
of Order (1 Year)

Order was to be Issued by

Stay by Court was issued till

2 Years

Period of Stay ie
2 years shall be
excluded

Hence Order may be issued till

30/09/2025

9819122318

Case Study: 7



Proper Officer



Issued SCN u/s 76

Demand of Tax

Rs 10 Lakhs

Interest

Rs 2 Lakhs

Penalty

100% of
Tax Amount
Tax Amount



Taxable Person

Solution



Calculate Amount of Penalty payable u/s 76 of CGST Act 2017?

As per Section 76 of CGST Act 2017

Penalty = 100% of Tax (GST Amount)

Penalty

Rs 10 Lakhs

Penalty is **"NOT CALCULATED"** on Interest on GST.

Case Study: 8



Proper Officer



Issued SCN u/s 76

Total Demand

Rs 5 Lakhs



Taxable Person



Whether Proper Officer is required to grant opportunity of being heard?

Solution

As per Section 76 (5) of CGST Act 2017

Opportunity of Being Heard shall be granted

If Taxable Person has
"REQUESTED IN WRITING"

If Taxable Person **"FAILS TO ASK"** for hearing, GST Department is **"NOT BOUND"** to give hearing.

Case Study: 9



Proper Officer

order.

Issued Order u/s 76

Tax Assessed

Rs 10 Lakhs



Taxable Person

Tax Collected but
not paid

Rs 10 Lakhs



Taxable Person

Erroneously Deposited
Rs 11 Lakhs with GST
Department

Tax (GST) deposited **is in excess of** GST
Liability as per Order u/s 76

GST DEPARTMENT



Solution

Whether Taxable Person may get refund of excess
GST Deposited?

As per Section 76 (10) of CGST
Act 2017



Shall Issue



Giving all the details
of amount deposited
by Taxable Person.



Shall Require Taxable
Person

To Apply for Refund

Within 6 Months from the
date of Issue of Public Notice



Applicant will have to substantiate that **incidence of Tax (GST) has been borne by him.**

Case Study: 10



Taxable Person

Tax Collected but not deposited **Rs 5 Crores**

01st April 2021

01 April 2021



Proper Officer



Issued SCN u/s 76

30th Sept 2025

order.

30th July 2026



Taxable Person

Paid GST to govt on

31st August 2026

31 August 2020



Calculate Interest and Penalty payable u/s 76 of CGST Act 2017?

Interest shall be calculated @ 18% p.a. from the

"Date of Collection of Tax (GST) till the Date of Payment of Tax (GST)"

Tax Collected on

Tax Deposited on

No of Days =

1979 Days

Interest =
 $\text{Rs 5 Crores} * 18\% * 1979 / 365$

Rs 4.87 Crores

Penalty = **100% of Tax (GST)** amount

Penalty = **100%** of Rs 5 Crores

Penalty = Rs 5 Crores

Summary of Section 76 of CGST Act 2017 – TAX (GST) Collected but not deposited.

Section 76 - Tax (GST) Collected but not paid / deposited

```
graph TD; A[Section 76 - Tax (GST) Collected but not paid / deposited] --> B[Section 76 (2)]; A --> C[Section 76 (3)]; A --> D[Section 76 (4)]; A --> E[Section 76 (5)]; A --> F[Penalty];
```

Section 76 (2)

Show Cause Notice
as to why

Amount Specified in
Notice should not be
paid by him? and

Why **Penalty**
equivalent to amount
specified in notice
should not be imposed
on him?

Section 76 (3)

After considering
representation,
P.O. shall
determine
amount of Tax
(GST).

Section 76 (4)

Interest payable
@ 18% from the
"DATE OF
COLLECTION" till
the **"DATE OF**
ACTUAL
PAYMENT"

Section 76 (5)

Opportunity
of Personal
Hearing when
request is
received in
writing from
Taxable Person

Penalty

Applicable as
per Section
122 of CGST
Act 2017

Summary of Section 76 of CGST Act 2017 – TAX (GST) Collected but not deposited.

Section 76 - Tax (GST) Collected but not paid / deposited

```
graph TD; A[Section 76 - Tax (GST) Collected but not paid / deposited] --> B[Section 76 (6)]; A --> C[Section 76 (7)]; A --> D[Section 76 (10)]; B --> E[There is "NO TIME LIMIT" for Issuance of Show Cause Notice]; E --> F[Order must be issued "WITHIN 1 YEAR" from the date of issuance of SCN]; C --> G[If the Issuance of an Order is "STAYED" by an Order of Court / Appellate Tribunal then]; G --> H[Period of Stay "SHALL BE EXCLUDED" for computing period of 1 Year.]; D --> I[If Taxable Person has deposited Tax (GST) in excess of Tax Amount then]; I --> J[Public Notice by P.O. and Refund Application within 6 months from the date of Public Notice];
```

Section 76 (6)

There is **"NO TIME LIMIT"** for Issuance of Show Cause Notice

Order must be issued **"WITHIN 1 YEAR"** from the date of issuance of SCN

Section 76 (7)

If the Issuance of an Order is **"STAYED"** by an Order of Court / Appellate Tribunal then

Period of Stay **"SHALL BE EXCLUDED"** for computing period of 1 Year.

Section 76 (10)

If Taxable Person has deposited Tax (GST) in excess of Tax Amount then

Public Notice by P.O. and Refund Application within 6 months from the date of Public Notice

Section 79 of CGST Act 2017.

Case Study: 1.



Proper Officer

order.

Served on 01/01/2021

Served on 01/01/2021



Rs 10 Lakhs



Reg Person



In How many days, Taxable Person is required to pay Tax (GST) along with Interest and Penalty?

Solution

As per **Section 78** of CGST Act 2017

Taxable Person shall be required to pay amount

Within 3 Months from the date of service of an order

+ 3 Months

Payment to be made by

31/03/2021

Case Study: 2.



Proper Officer

order.

Served on 01/01/2021



Rs 25 Lakhs



Reg Person

Taxable Person is going to permanently leave India within 2 months



Can P.O. "Reduce time limit of 3 months" for payment of Interest, Tax and Penalty?

Solution

As per Section 78 of CGST Act 2017

P.O. for reasons to be recorded in writing

Specify that payment shall be made "Prior to period of 3 months" if



Proper Officer

REASONS TO BELIEVE

That Taxable Person is required to make payment prior to 3 months.

Case Study: 3.



Proper Officer

order.

Served on 01/10/2021



Rs 50 Lakhs



Taxable Person

NOT SATISFIED WITH ORDER

Does not Intent to pay Tax,
Interest and Penalty.

Solution



What are the Remedies available with Taxable Person?



Taxable Person

If Taxable Person is **"NOT SATISFIED"** with Order and does not intend to make payment then

He may file an



Appellate Tribunal

Case Study: 4.



Proper Officer

order.

Served on 01/10/2021



Rs 50 Lakhs



Taxable Person

Does not intent to
pay GST

within 3 months

Does not File Appeal

within 3 months



What are the possible course of action to be taken by Proper Officer?

Solution



Proper Officer

Shall Initiate



Recovery Proceedings u/s 79 of CGST Act 2017

Section 79 of CGST Act 2017.
Methods of Recovery of Tax (GST).

Method 1 – Recovery by deduction from any money owed by Taxable Person [Section 79(1)(a) read with rule 143].



Taxable Person

August 2021



Rs 5 Crores



GST Refund to be pro

Rs 90 Lakhs

khs



Proper Officer

order.

Served on 01/10/2021



Rs 50 Lakhs



Taxable Person

Does not intent to pay GST and does not file appeal

within 3 months

By 30 / 11 /2021



Proper Officer

May Deduct / Recover from Eligible Refund

(Amount Payable to Person)

Deduct Demand of Rs 50 L from Refund of Rs 90 L



Rs 30 Lakhs



P.O. shall grant refund of GST of only Rs 30 Lakhs



Method 1 – Recovery by deduction from any money owed by Taxable Person.



Taxable Person

April 2021



Rs 10 Crores



GST Refund with **Commissioner** – **Rs 1.8 Crores**

GST
Commissioner

GST Audit u/s
65

GST Audit u/s
66



Taxable Person

**Does not intent to pay GST and does not file
appeal**

within 3 months

By 30 / 06 /2021

Demand – Rs 1 Crore

May Direct Specified Officer in **DRC - 09**

GST
Commissioner

To deduct amount of Tax (GST) along with Interest and Penalty **(Rs 1Crore) from
GST Refund of Rs 1.8 Crores.**



Proper Officer



Rs 30 Lakhs



P.O. shall grant refund of GST of only
Rs 80 Lakhs (1.8 Cr – 1 Cr)



Method 1 – Recovery by deduction from any money owed by Taxable Person.

Method 1 – Recovery by deduction from any money owed by Taxable Person

```
graph TD; A[Method 1 – Recovery by deduction from any money owed by Taxable Person] --> B[If GST Refund is pending with Proper Officer]; A --> C[If GST Refund is pending with Specified Officer (Commissioner)]; B --> D[Proper Officer shall himself deduct Recovery Amount of Demand against GST Refund.]; C --> E[Proper Officer shall direct specified officer in DRC 09 and such specified officer shall deduct Recovery Amount of Demand against GST Refund.]
```

If GST Refund is pending with Proper Officer

Proper Officer shall himself deduct Recovery Amount of Demand against GST Refund.

If GST Refund is pending with Specified Officer
(Commissioner)

Proper Officer shall direct specified officer in DRC 09 and such specified officer shall deduct Recovery Amount of Demand against GST Refund.

Form DRC 09.

FORM GST DRC – 09

[See rule 143]

To

Particulars of defaulter -

GSTIN –

Name -

Demand order no.:

Reference no. of recovery:

Period:

Date:

Date:

Order for recovery through specified officer under section 79

Whereas a sum of Rs. <<----->> on account of tax, cess, interest and penalty is payable under the provisions of the <<SGST/UTGST/ CGST/ IGST/ CESS>> Act by the aforesaid person who has failed to make payment of such amount. The details of arrears are given in the table below:

(Amount in Rs.)					
Act	Tax/Cess	Interest	Penalty	Others	Total
1	2	3	4	5	6
Integrated tax					
Central tax					
State/UT tax					
Cess					
Total					

<< Remarks >>

You are, hereby, required under the provisions of section 79 of the <<SGST>> Act to recover the amount due from the << person >> as mentioned above.

Signature Name Designation

Method 2 – Recovery by Sale of Goods under the control of Proper Officer ([Section 79(1)(b) read with rule 144].



Proper Officer



Seized and Detained



Market Value – Rs 1 Cr



Taxable Person



Proper Officer

order.

Tax

Rs 25 L

Interest

Rs 10 L

Penalty

Rs 8 L

Administrative
Expenses

Rs 7 L

TOTAL

Rs 50 L



Taxable Person



Proper Officer

P.O. shall make
Inventory of goods

Estimate **Market
Value** of Goods

(Say Rs 1 Cr)

Sell such goods for
recovery of dues of
Rs 50 Lakhs through

“Auction”



Including
E-Auction



Taxable Person



Method 2 – Recovery by Sale of Goods under the control of Proper Officer ([Section 79(1)(b) read with rule 144].



Proper Officer

Notice in **DRC - 10**

For Auction including
E-Auction



Indicating Goods to be
sold in Auction and

Purpose of Sale of
Goods in Auction



Bidder

Will Bid for Goods

Highest Bidder shall get
the goods



Proper Officer

Notice in **DRC – 11**

Requiring him
to **make
payment** of
goods

Within 15 Days
from the date
of auction



Successful Bidder



Prop

On Receipt of Bid Amount

Goods shall be
handed over to
the Bidder

Certificate shall
be issued in
**Form GST
DRC 12**



Successful Bidder

FAQ: 1.



In which form P.O. shall send Notice of Auction of Goods Detained & Seized?



Proper Officer

Notice shall be issued in form GST DRC 10 indicating



Taxable Person

Goods to be sold in auction

Purpose of Sale

FORM GST DRC – 10

[See rule 144(2)]

Notice for Auction of Goods under section 79 (1) (b) of the Act

Demand order no.:

 Date:

Period:

Whereas an order has been made by me for sale of the attached or distrained goods specified in the Schedule below for recovery of Rs..... and interest thereon and admissible expenditure incurred on the recovery process in accordance with the provisions of section 79.

The sale will be by public auction and the goods shall be put up for sale in the lots specified in the Schedule. The sale will be of the right, title and interests of the defaulter. And the liabilities and claims attached to the said properties, so far as they have been ascertained, are those specified in the Schedule against each lot.

The auction will be held on at.... AM/PM. In the event the entire amount due is paid before the date of auction, the sale will be stopped.

The price of each lot shall be paid at the time of sale or as per the directions of the proper officer/ specified officer and in default of payment, the goods shall be again put up for auction and resold.

Schedule

FAQ: 2.



When will successful bidder be required to make payment to Proper Officer?



Proper Officer

After Finalizing Bid,
Notice in Form DRC 11

Requiring him to make payment

“WITHIN 15 DAYS”

From the Date of Auction



Bidder

FORM GST DRC – 11
[See rule 144(5) & 147(12)]



Notice to successful bidder

To,

Please refer to Public Auction Reference no. _____ dated _____. On the basis of auction conducted on _____, you have been found to be a successful bidder in the instant case.

You are hereby, required to make payment of Rs. _____ within a period of 15 days from the date of auction.

The possession of the goods shall be transferred to you after you have made the full payment of the bid amount.

Signature
Name
Designation

Place:

Date:

FAQ: 3.



Will P.O. issue any **document / certificate** for sale of goods to bidder?



Proper Officer

P.O. shall issue

“CERTIFICATE IN FORM GST DRC - 12



Bidder

FORM GST DRC – 12
[See rule 144(5) & 147(12)]

Sale Certificate

Demand order no.:
Reference no. of recovery:
Period:

Date:
Date:

This is to certify that the following goods:

Schedule (Movable Goods)

Sr. No.	Description of goods	Quantity
1	2	3

Schedule (Immovable Goods)

Building No./ Flat No.	Floor No.	Name of the Premises /Building	Road / Street	Localit y/ Village	District	Stat e	PIN Code	Latitude (optional)	Longitude (optional)
------------------------------	--------------	--------------------------------------	---------------------	--------------------------	----------	-----------	-------------	------------------------	-------------------------

FAQ 4.



Proper Officer



Seized and Detained



Taxable Person



Taxable Person



Paid Tax + Interest and
Penalty

Paid Administrative
expenses

Before Issuance of Notice in DRC -10



Proper Officer



Will Proper Officer **issue notice in GST Form DRC 10** and **conduct auction** for goods detained?

Solution



Proper Officer

P.O. shall release goods so detained to Taxable Person



Taxable Person

FAQ 5.



Proper Officer



Seized and
Detained



Notice also
issued in
DRC 10 for
Auction



Taxable Person



Taxable Person



Paid Tax + Interest and
Penalty

Paid Administrative
expenses

After Issuance of Notice in DRC -10



Proper Officer



Will Proper Officer **conduct auction** for goods detained?

Solution



Auction shall
be cancelled



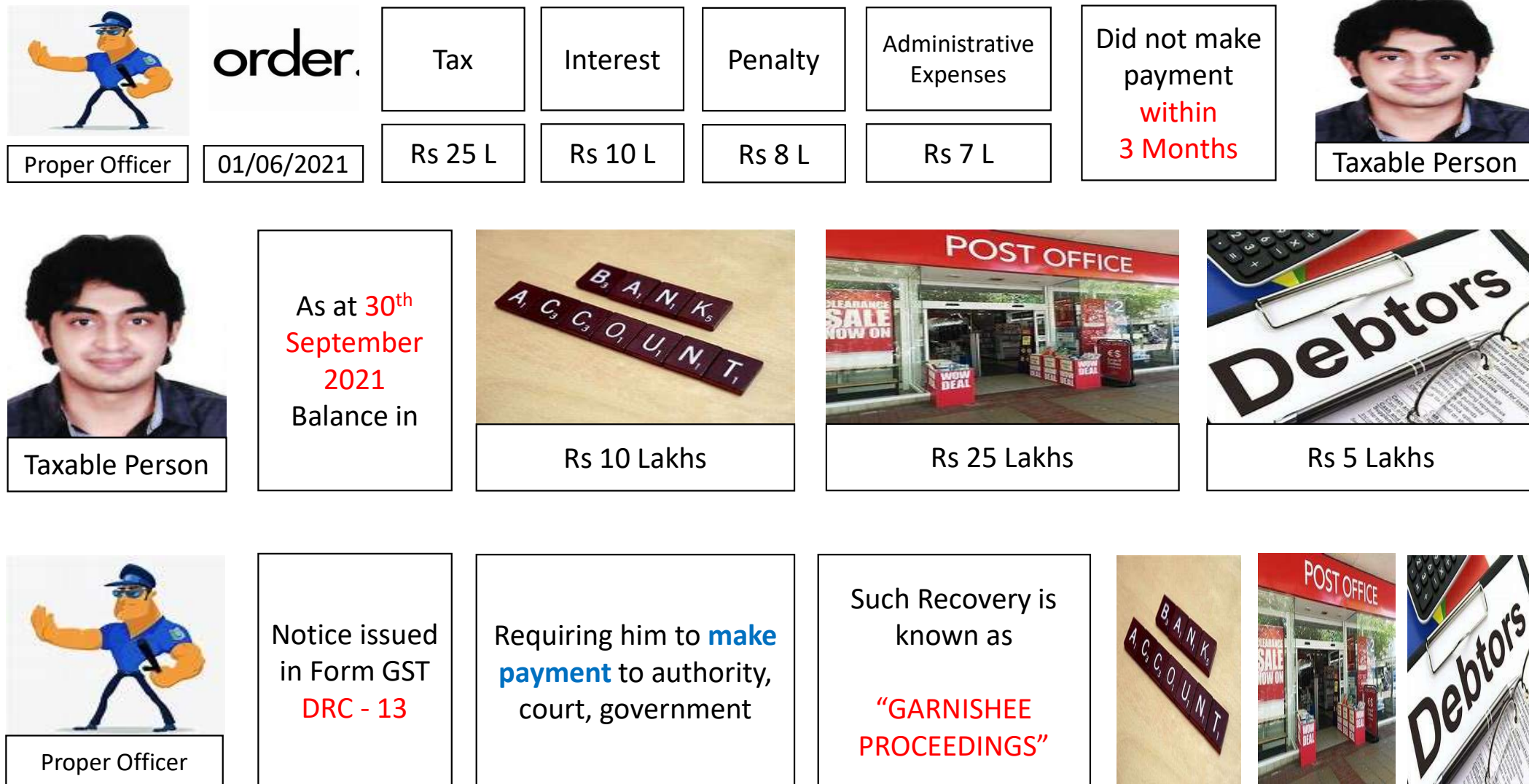
Proper Officer

P.O. shall release goods so detained
to Taxable Person



Taxable Person

Method 3 – Recovery from a third person [Section 79(1)(c) read with rule 145] – Garnishee Proceedings.



Method 3 – Recovery from a third person [Section 79(1)(c) read with rule 145] – Garnishee Proceedings.



Shall be compulsorily required to make payment

If Person fails to pay

He shall be deemed as **"ASSESSEE IN DEFAULT"**

Recovery shall be made from such defaulting person



Proper Officer



Proper Officer

P.O. shall issue certificate in **Form GST DRC – 14**

Indicating details of liability



FAQ: 1



In which form, Notice will be issued to Banks, Post Officer and Debtors of such Taxable Person?



Proper Officer

P.O. shall issue

“NOTICE IN FORM GST DRC - 13



Third Person

Place:

Date:

FORM GST DRC – 13*[See rule 145(1)]*

374

Notice to a third person under section 79(1) (c)

To

The _____

Particulars of defaulter -

GSTIN –

Name -

Demand order no.:

Date:

Reference no. of recovery:

Date:

Period:

Whereas a sum of Rs. <<---->> on account of tax, cess, interest and penalty is payable under the provisions of the <<SGST / UTGST/CGST/ IGST>> Act by <<Name of Taxable person>> holding <<GSTIN>> who has failed to make payment of such amount; and/or

FAQ: 2.



Will P.O. issue any acknowledgment, if banks, post office, debtors make payment?



Proper Officer

P.O. shall issue certificate in **Form GST DRC – 14**

Indicating details of liability



Third Person

FORM GST DRC – 14

[See rule 145(2)]

Certificate of Payment to a Third Person

In response to the notice issued to you in **FORM GST DRC-13** bearing reference no. _____ dated _____, you have discharged your liability by making a payment of Rs. _____ for the defaulter named below:

GSTIN –

Name -

Demand order no.:

Date:

Reference no. of recovery:

Date:

Period:

This certificate will constitute a good and sufficient discharge of your liability to above mentioned defaulter to the extent of the amount specified in the certificate.

Signature

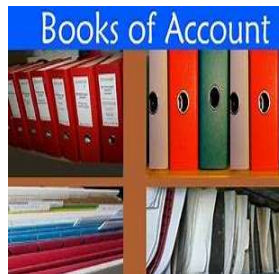
Name

FAQ: 3.



Taxable Person

As at **30th**
September 2021
Balance as per



Rs 10 Lakhs



Rs 25 Lakhs



Rs 5 Lakhs



Proper Officer

Notice issued in **Form GST DRC – 13** for payment of amount
due to such Taxable Person to Government



Submits

LEDGER



Substantiating that **payment was already made** to Taxable Person



Proper Officer



Proper Officer

In such case, such third person
shall **“NOT BE LIABLE”** to make
payment

Notice of “DRC 13”

“SHALL BE WITHDRAWN”



Method 4 – Recovery by sale of Movable / Immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154].



Proper Officer

order.

01/06/2021

Tax

Rs 25 L

Interest

Rs 10 L

Penalty

Rs 8 L

Administrative
Expenses

Rs 7 L

Did not make
payment
within
3 Months



Taxable Person

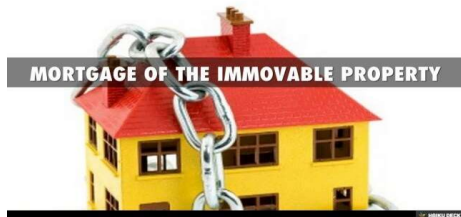


Taxable Person

As at

30th September 2021

IMMOVABLE PROPERTY



Movable Property

Market Value – Rs 10 Crores



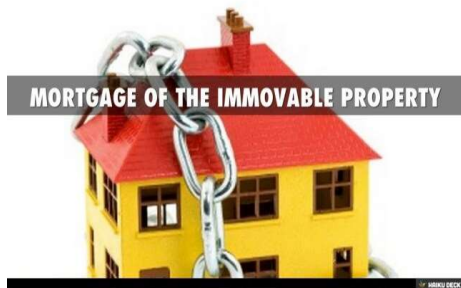
Proper Officer

SEIZE

SEALED

DISTRAIN
(Take Possession)

IMMOVABLE PROPERTY



Movable Property



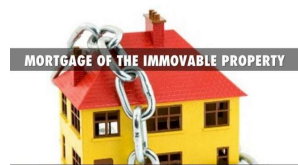
Method 4 – Recovery by sale of Movable / Immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154].



Proper Officer

P.O. shall prepare
List of

IMMOVABLE PROPERTY



Movable
Property

**Closing
Stock**

P.O. shall **Estimate
Market Value** as
per prevalent
market price



Taxable Person



Proper Officer



Prohibiting any transaction with
regard to such **movable and
immovable property** as may be
required **for the recovery of the
amount due**

For All Property

**Issue Order of
Attachment or Distrain**
(Take Possession)

For Movable
Property

May Seize the
Property and take its
custody

ATTACHMENT SEIZE



Taxable Person



Proper Officer

Any part of the said amount
payable or of the cost of the
distress or keeping of the
property, **remains unpaid**

For a **period of 30 days** next
after such distress

IMMOVABLE PROPERTY



Movable
Property



P.O. **may Sell** such property through



Including
E-Auction



Taxable Person

Case Studies and FAQ: 1.



In which form officer shall send Notice
for **Attachment and Sale of Property?**



Proper Officer

P.O. shall issue certificate in **Form GST DRC – 16**
**Indicating details of Attachment and Sale of Immovable /
Movable Property / Shares u/s 79**



Taxable Person

FORM GST DRC – 16
[See rule 147(1) & 151(1)]

To

GSTIN -

Name -

Address -

Demand order no.:

Date:

Reference no. of recovery:

Date:

Period:

Notice for attachment and sale of immovable/movable goods/shares under section 79

Whereas you have failed to pay the amount of Rs....., being the arrears of tax/cess/interest/penalty/ fee payable by you under the provisions of the <<SGST/UTGST/CGST/ IGST/ CESS>> Act.

The immovable goods mentioned in the Table below are, therefore, attached and will be sold for the recovery of the said amount You are hereby prohibited from transferring or

Case Studies and FAQ: 2.



In which form officer shall send Notice
for **Auction of Property?**



Proper Officer

P.O. shall issue certificate in **Form GST DRC – 17**
**Indicating details of Auction of Immovable/Movable
Property under section 79(1) (d)**



Taxable Person

FORM GST DRC – 17

[See rule 147(4)]

Notice for Auction of Immovable/Movable Property under section 79(1) (d)

Demand order no.:

Date:

Reference number of recovery:

Date:

Period:

Whereas an order has been made by me for sale of the attached or distrained goods specified in the Schedule below for recovery of Rs..... and interest thereon and admissible expenditure incurred on the recovery process in accordance with the provisions of section 79.

The sale will be by public auction and the goods shall be put up for sale in the lots specified in the Schedule. The sale will be of the right, title and interests of the defaulter. And the liabilities and claims attached to the said properties, so far as they have been ascertained, are those specified in the Schedule against each lot.

In the absence of any order of postponement, the auction will be held
on _____ (date) at _____ A.M./P.M. In the event the entire

Case Studies and FAQ: 3.



Proper Officer

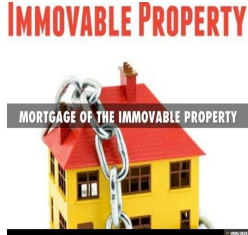
ATTACHMENT SEIZE



DRC 16



DRC 17



Movable
Property



Taxable Person



Taxable Person



Paid Tax + Interest and
Penalty

Paid Administrative
expenses

After Issuance of Notice in DRC -17



Proper Officer



Will Proper Officer **conduct auction** for property distrained /
seized / attached?

Solution



Proper Officer

P.O. shall release goods property distrained / seized /
attached to Taxable Person



Taxable Person

Case Studies and FAQ: 4.



Adequate Consideration

Good Faith

25th November 2021



ATTACHMENT SEIZE

On 10th December 2021



Whether

May Raise an



With regard to the attachment / distraint of any property

Claiming that he had some interest in/was in possession of, the property in question,

Solution to Case Studies and FAQ: 4.



Proper Officer



Shall begin Investigation



The Sale of Property
during the period of
Investigation



Proper Officer



If he finds Merit in his



Proper Officer **"SHALL RELEASE"** the
property wholly or partly



Proper Officer

If he **"DOES NOT"**
find merit in his



Proper Officer will **"REJECT THE CLAIM /
OBJECTION"** and proceed with the
process of sale through auction.

Section 80 of CGST Act 2017.
Payment of Tax and Other Amount in Instalments.

Section 80 of CGST Act 2017 – Payment of Tax and other amount in Instalments.



Reg Person



Received U/s 73, 74 or 75

Demand in Order issued by P.O.

Tax	Interest	Penalty	TOTAL
Rs 20 L	Rs 3 L	Rs 1 L	Rs 24 L



Reg Person

Does not have



If Rs 24 Lakhs are paid then possibility of



Requests P.O. to allow payment of amount in **Instalments**



P.O.

Solution



Whether there is any provision in GST Act which allows **payment of Tax and Other Amount in Instalments?**

As per **Section 80** of CGST Act 2017

GST
Commissioner

For Reasons to be recorded in writing

Extend the time limit and allow payment of Tax and Other Amount under this act
"IN INSTALMENTS"

However commissioner may allow **maximum Upto "24 INSTALMENTS"**.

Section 80 of CGST Act 2017 – Payment of Tax and other amount in Instalments.



Order issued u/s 73

Demand – Rs 20 Lakhs



Order issued u/s 74

Demand – Rs 50 Lakhs



Order issued u/s 75

Demand – Rs 1 Crore

All Taxable Persons shall pay GST in Instalments only



What shall be the consequences for payment of GST in Instalments?

Solution



Taxable Person

For payment of GST in Instalments, Taxable Person shall be liable to pay

“INTEREST”



Proper Officer

Case Study: 1



Reg Person



Rs 20 Lakhs

On 01st April 2022

GST Commissioner allowed payment of
Tax and other amount in
“20 MONTHLY INSTALMENTS”

“1st April 2022 to 30th November 2023”



How Interest shall be
calculated for delayed
payment of Tax and
other amount?

Solution



Rs 1 Lakh

Paid on
30/11/2023

Interest for the period
01/04/22 to 30/11/23
(20 Months)

Rs 1 Lakh

*

18%

*

20/12

Interest = Rs 30,000



Rs 1 Lakh

Paid on
01/06/2022

Interest for the period
01/04/22 to 01/06/22
(2 Months)

Rs 1 Lakh

*

18%

*

2/12

Interest = Rs 3,000



Rs 1 Lakh

Paid on
01/07/2022

Interest for the period
01/04/22 to 01/07/22
(3 Months)

Rs 1 Lakh

*

18%

*

3/12

Interest = Rs 4,500

Such Interest shall be calculated Upto payment of final Instalment on 30th November 2023.

Procedure for Payment of Tax and Other Amount in Instalments.

Procedure for Payment of Tax and other amount in Instalments.



Taxable Person

As per **Section 80**
read with Rule 158
of CGST Rules 2017



In Form DRC 20

Seeking **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,

GST

Commissioner

Report

Shall Call for



Jurisdictional Officer

To verify Financial stability of



Balance Sheet
It has to balance



Taxable Person

GST

Commissioner

If satisfied with DRC – 20 application
and from report of jurisdictional
officer then

GST Commissioner shall
extend the time or allow
payment of GST in Instalments
in

GST Form

DRC 21

GST

Commissioner

If Not satisfied with DRC – 20
application and from report of
jurisdictional officer then

GST Commissioner shall
“REJECT APPLICATION” for
reasons to be recorded in
writing in

GST Form

DRC 21

FORM GST DRC – 20

[See rule 158(1)]

Application for Deferred Payment/ Payment in Instalments

1. Name of the taxable person-
2. GSTIN -
3. Period _____

In accordance with the provisions of section 80 of the Act, I request you to allow me extension of time upto ----- for payment of tax/ other dues **or** to allow me to pay such tax/other dues in -----instalments for reasons stated below:

Demand ID	
------------------	--

Verification

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory _____

Name _____

Place -

Date -

FORM GST DRC – 21

[See rule 158(2)]

Case Studies and Frequently Asked Questions.

FAQ : 1



Reg Person

order.



Whether facility for payment in instalments shall be granted for

Solution

As per Section 80 of CGST Act 2017,

GST Commissioner

Shall extend the time for payment or allow payment of

“ANY AMOUNT DUE” under this Act,

Demand in Order issued by P.O.

Tax	Interest	Penalty	TOTAL
Rs 20 L	Rs 3 L	Rs 2 L	Rs 25 L

OR

TOTAL

Rs 25 L

Hence Facility of Deferred Payment or payment in instalment shall be available for

FAQ : 2



Taxable Person

Tax Collected but not deposited

Rs 50 Lakhs



Received U/s 76 of CGST Act 17

He applied for payment of GST in Instalments as per Section 80



Whether Taxable Person may apply for payment of GST in Instalments **for notice received u/s 76 of CGST Act 2017?**

Solution

Benefit of payment of GST in Instalments is extended only for amount of demand confirmed

U/s 73 or 74 or 75 of CGST Act 2017

Hence Payment of GST in instalments **“SHALL NOT BE EXTENDED”** for **SCN received u/s 76 of CGST Act 2017.**

FAQ : 3



Taxable Person



April 2022

GST Liability

Rs 90 Lakhs

Shortage of



Seeks to pay GST in Instalments

Solution



Whether GST Commissioner may extend the facility of payment of GST in Instalments u/s 80 for case of

Self Assessment
(GSTR 3B)



If benefit for payment of GST in Instalments is extended for Self Assessment (GSTR 3B) then

All Registered Person shall pay
monthly liability (GSTR 3B) in Instalments



Government shall **not be able to earn**
"Monthly Targeted GST Revenue"

Hence Payment of GST in instalments **"IS NOT EXTENDED"** for **Self Assessment in GSTR 3B Return.**

Case Study: 1



Taxable Person



Demand to be
paid in
20 Instalments

Rs 25 Lakhs

Rs 25 Lakhs

On 01st January 2022

Demand to be paid in
20 Instalments

Rs 1.25 Lakhs each

~~Paid 2 Instalments~~ on

Paid 3 Instalments
on Due Date

Rs 3.75 Lakhs total

Rs 3.75 Lakhs total



P.O.



Taxable Person

DEFAULT

Instalment May 2022



What shall be the **“CONSEQUENCES FOR DEFAULT”** in
payment of an Instalment u/s 80 of CGST Act 2017?

INTEREST

LATE FEES

PENALTY

If a person **“DEFAULTS”** in
payment of
“EVEN ONE INSTALMENT”

Entire Remaining Outstanding
Balance becomes payable

On the Date of such Default



Taxable Person

In May 2022, **remaining
outstanding balance of
Rs 21.25 Lakhs**
becomes payable

Case Study: 2



Taxable Person



Rs 20,000



In Form DRC 20

For Payment
of GST in
Instalments



GST Commissioner



How many instalments shall be granted by
GST Commissioner?

Solution

Benefit of payment of GST in Instalments is
"NOT EXTENDED" if amount of demand is

LESS THAN Rs 25,000

In given case

Hence Benefit of payment of GST in
Instalments as per Section 80

"SHALL NOT BE AVAILABLE"

Case Study: 3



Taxable Person

FY 2021-22

order.



Rs 5 Lakhs



Recovery Proceedings is initiated u/s 79 against Taxable person for such default in payment



Taxable Person

FY 2022-23

order.



Rs 10 Lakhs



In Form DRC 20



GST Commissioner



Will Proper officer grant facility for payment of GST in Instalments as per Section 80 of CGST Act 2017?

Solution



If Taxable Person has already **"DEFAULTED"** in the payment of amount under CGST / SGST / UTGST / IGST Act

For which recovery process is initiated then

Benefit of section 80

"SHALL NOT BE ALLOWED"

Case Study: 4



Taxable Person

FY 2022-23

order.



Rs 10 Lakhs



In Form DRC 20



Commissioner

**"REJECTED PAYMENT
OF GST" in Instalments**
In FY 2022-23



Taxable Person

FY 2023-24

order.



Rs 30 Lakhs



In Form DRC 20



GST Commissioner



Will Proper officer grant facility for payment of GST in
Instalments again in subsequent financial year?

Solution



If Taxable Person has **"NOT
BEEN ALLOWED"** to make
payment of amount in
instalments

In Preceding Financial Year
then

Benefit of section 80

**"SHALL NOT BE
ALLOWED"**

In current financial year

Summary of Section 80 of CGST Act 2017.



Taxable Person



Received U/s 73, 74 or 75



In Form DRC 20



GST Commissioner

May extend the time or
allow payment of GST in
Instalments in

Form GST DRC 21

Interest shall be payable for benefit **extended @ 18% per annum.**

Maximum 24 Instalments shall be allowed

In case of Non Payment of Even One Instalment, Entire **Remaining Outstanding Balance** becomes payable

Benefit of Section 80 is **"NOT AVAILABLE"** if

Amount of Demand for
which Instalment or
Deferment is sought is

"LESS THAN Rs 25,000"

If Taxable Person has already
"DEFAULTED" in the payment of
amount under CGST / SGST /
UTGST / IGST Act for which
recovery proceedings are initiated

If Taxable Person has
"NOT BEEN ALLOWED"
to make payment of
amount in instalments in
preceding financial year

For Self Assessment
(GSTR 3B Returns)

Section 81 of CGST Act 2017.
Transfer of Property to be Void in certain cases.

Section 81 of CGST Act 2017 – Transfer of Property to be Void in certain cases.



Proper Officer

order.

April 2022

Rs 1 Crore



Taxable Person

Recovery Proceedings will be initiated by Proper Officer **after 3 months ie**

In July 2022



Taxable Person

Fear of Property being **seized, sealed or attached** for recovery of proceedings as per section 79 of CGST Act 2017

MOVABLE



Is Owner of Property



Taxable Person

CHARGE



Exchange



MOVABLE



Movable / Immovable Property

With

Low Consideration

or

No Consideration

May 2022

With the
Intention of
Defrauding
Government
Revenue

Section 81 of CGST Act 2017 – Transfer of Property to be Void in certain cases.



Proper Officer

Initiated Recovery Proceedings in **July 2022**

As per Section 79,
Proposes to attach, seize or seal such



Immovable Property



Informs



MOVABLE



Movable / Immovable

In Favor of
Any Other Person

Property **Cannot be**
attached, seized or
sealed.



Proper Officer



Before Proper Officer
can initiate recovery
proceedings u/s 79 of
CGST Act 2017



All Taxable Person

Shall Create



GST Department
/ Government
shall

"NOT EARN"
GST Revenue

Section 81 of CGST Act 2017 – Transfer of Property to be Void in certain cases.



To avoid such defrauding of government revenue, Government introduced

Section 81 of CGST Act 2017

TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES

Section 81 of CGST Act 2017 – Transfer of Property to be Void in certain cases.

If **“ANY AMOUNT”** has become due from any person through



order.

And

Such person with the

“INTENTION OF DEFRAUDING THE GOVERNMENT REVENUE”



Or by any other mode of transfer in favor of any other person

OR

Creates charge on full or part of property belonging to him or any other person

Then such transfer of Property **shall be “VOID”**

Proper Officer may still **attach, seize or seal** such Movable / Immovable Property.

Case Studies and Frequently Asked Questions.

Case Study: 1



Proper Officer

order.

April 2022

Rs 1 Crore



Taxable Person

Taxable Person does not have sufficient working capital to pay



Taxable Person

Requests / Applies for sale of such property with permission of

Sale Proceeds shall be used / utilized for payment of such Demand as per SCN / Order

Proper Officer /
GST Commissioner



Whether Transfer of such property shall be Void?

Solution

As per **Proviso to Section 81** of CGST Act 2017

If Charge or transfer of Movable / Immovable Property is

“WITH THE PREVIOUS PERMISSION OF PROPER OFFICER”

Then such Transfer

“SHALL BE VALID”

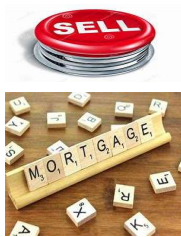
Case Study: 2



Taxable Person

CHARGE

Exchange



MOVABLE



In Good Faith and With

**Adequate
Consideration**

May 2022

STAMP DUTY



Property sold at



Proper Officer



June 2022



Taxable Person

Show Cause Notice was issued **"AFTER"** the transfer of Property or after charge was created against such property.



Whether Transfer of such property shall be Void?

Solution

As per **Proviso to
Section 81** of CGST Act
2017

If Transfer is made for **adequate consideration, in good faith** and

Without notice of the pendency of such proceedings under this
Act or without notice of such tax or other sum payable by the
said person

Then such Transfer
"SHALL BE VALID"

Section 83 of CGST Act 2017 – Provisional Attachment to Protect Revenue in certain cases.



Proper Officer



U/s 62,63,64,73 or 74

order.



Rs 10 Crores



Taxable Person



Taxable Person

They are also having



GST
Commissioner

Is of the
Opinion that



Such Taxable Person

Will Not pay
government
revenue

Will Transfer Money
from their Bank Account
to **Foreign Banks**



बैंक ऑफ़ इंडिया
Bank of India



BANK OF ENGLAND

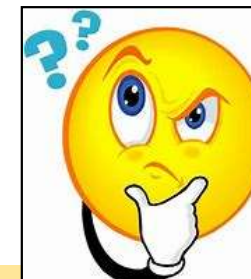


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If all Taxable Person shall transfer money
outside Indian then

GST Department / Govt shall **"NOT EARN"**

GST Revenue



What are the Possible
solutions to save GST
Revenue?

Section 83 of CGST Act 2017 – Provisional Attachment to Protect Revenue in certain cases.



To avoid such defrauding of government revenue, Government introduced

Section 83 of CGST Act 2017

PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES

Section 83 of CGST Act 2017 – Provisional Attachment to Protect Revenue in certain cases.

If “**GST COMMISSIONER**” is of the opinion that for the purpose of

Protecting the

Interest of Government Revenue

It is necessary to do so

He may, **by order in writing**
ATTACH PROVISIONALLY “ANY PROPERTY”,
including bank account, belonging to the
taxable person in such manner as may be
prescribed



Movable Property



Immovable Property



Bank A/c / Fixed Deposits



Post Office



Taxable Person

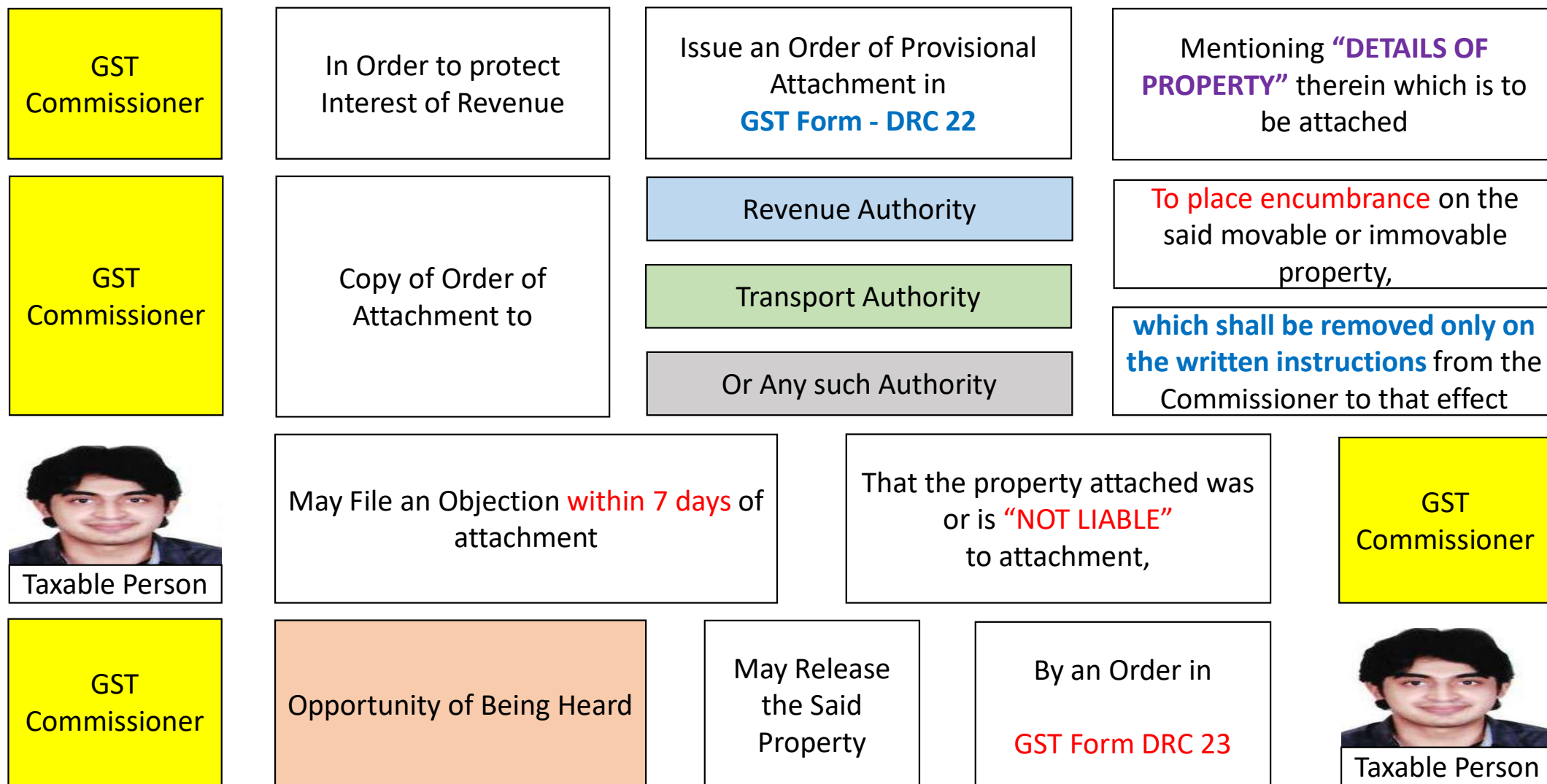
SHALL NOT BE ABLE TO

CHARGE

Exchange



Procedure for Provisional Attachment.



Case Studies and Frequently Asked Questions.

Case Study:

GST
Commissioner

Order of **Provisional Attachment** in
GST Form - DRC 22
of following goods



Perishable Goods



Hazardous Goods



Taxable Person

If not sold, Goods may get
"DAMAGED / DETERIORATED"



What are the **Possible Course of Action** with the
Taxable Person and Commissioner?

Solution



Taxable Person

If Taxable Person
Pays Amount equal to the
Market Price of such goods



Or pays the
amount of Tax,
Interest, Penalty as
per Notice

Whichever
is less



Proper
Officer

Shall Release / Return such Goods by an order
in prescribed form or proof of payment



Taxable Person

If Taxable Person
does not pay then



Commissioner

Shall Dispose of
such Goods

Adjust such amount against
Tax, Interest, Penalty, Fees
or any amount payable by
such Taxable Person.

FAQ



In which form, officer shall issue **Order of Provisional Attachment of Any Property?**

Solution

As per Section 83,
If “**GST COMMISSIONER**” is of
the opinion that for the
purpose of

Protecting the
**Interest of Government
Revenue**
It is necessary to do so

He may, **by order in writing**
ATTACH PROVISIONALLY
“ANY PROPERTY”,
including bank account,
belonging to the taxable
person in

Form GST – DRC – 22 (Rule 159 (1))

FORM GST DRC - 22

[See rule 159(1)]

Reference No.:

Date:

To

----- Name

----- Address

(Bank/ Post Office/Financial Institution/Immovable property registering authority)

Provisional attachment of property under section 83

It is to inform that M/s ----- (name) having principal place of business at --
----- (address) bearing registration number as ----- (GSTIN/ID), PAN ----- is
a registered taxable person under the <<SGST/CGST>> Act. Proceedings have been
launched against the aforesaid taxable person under section << --->> of the said Act to
determine the tax or any other amount due from the said person. As per information available
with the department, it has come to my notice that the said person has a -

<<saving / current / FD/RD / depository >> account in your << bank/post office/financial
institution>> having account no. << A/c no. >>;

FAQ

GST
Commissioner

Issue an Order of Provisional
Attachment in

GST Form - DRC 22



Taxable Person

Not satisfied with Order and is of
the opinion that property is
"NOT LIABLE" for attachment



Whether Taxable Person can challenge such order?

Solution



Taxable Person

May File an Objection **within 7 days** of
attachment

That the property attached was
or is **"NOT LIABLE"**
to attachment,

GST
Commissioner

GST
Commissioner

Opportunity of Being Heard

May Release
the Said
Property

By an Order in
GST Form DRC 23



Taxable Person

FORM GST DRC - 23

[See rule 159(3), 159⁵(5) & 159(6)]

Reference No.:

Date:

To

----- Name

_____ Address

(Bank/ Post Office/Financial Institution/Immovable property registering authority)

Order reference No. -

Date –

Restoration of provisionally attached property / bank account under section 83

Please refer to the attachment of << saving / current / FD/RD>> account in your << bank/post office/financial institution>> having account no. <<----- >>, attached vide above referred order, to safeguard the interest of revenue in the proceedings launched against the person. Now, there is no such proceedings pending against the defaulting person which warrants the attachment of the said accounts. Therefore, the said account may now be restored to the person concerned.

or

Section 84 of CGST Act 2017.

Continuation of Validation of Certain Recovery Proceedings.

Section 84 of CGST Act 2017 – Continuation of Validation of Certain Recovery Proceedings.



Proper Officer



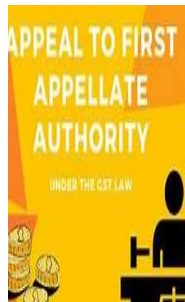
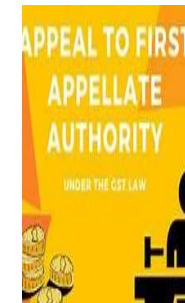
Rs 25 Lakhs



Taxable Person



Application by **P.O. or**
Taxable Person to



Identified many other
Discrepancies

Enhanced Demand

To Rs 40 Lakhs



Taxable Person



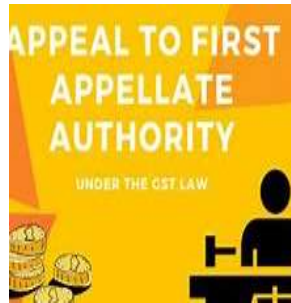
Whether P.O. shall be liable to issue

“FRESH NOTICE OF DEMAND”

For Enhanced Demand of Rs 15 Lakhs (40-25)?

Section 84 of CGST Act 2017 – Continuation of Validation of Certain Recovery Proceedings.

As per **Section 84** of CGST Act 2017, if



Enhances Demand / Government Dues then

GST Commissioner

Shall Serve **"ANOTHER"**



in respect of the amount by which such Government dues **are enhanced**

Original Demand
- **Rs 25 Lakhs**

Enhanced Demand
- **Rs 40 Lakhs**

Fresh Notice of Demand – **Rs 15 Lakhs**



Taxable Person

Section 84 of CGST Act 2017 – Continuation of Validation of Certain Recovery Proceedings.



Proper Officer



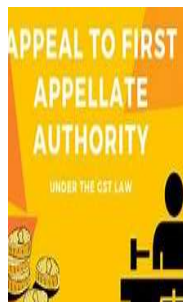
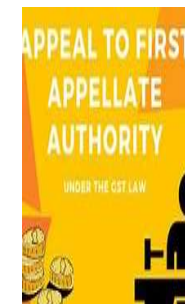
Rs 25 Lakhs



Taxable Person



Application by **P.O. or**
Taxable Person to



REDUCED DEMAND

To Rs 20 Lakhs



Taxable Person



Whether P.O. shall be liable to

“CANCEL NOTICE OF DEMAND OF Rs 25 LAKHS”

& ISSUE FRESH NOTICE OF DEMAND OF Rs 20 LAKHS?

Section 84 of CGST Act 2017 – Continuation of Validation of Certain Recovery Proceedings.

As per **Section 84** of CGST Act 2017, if



Reduces Demand / Government Dues then

GST Commissioner

Shall
"NOT BE REQUIRED"
to Issue Fresh Notice
of Demand

Commissioner
shall give
"INTIMATION" of
**Reduction of
Demand** to



Appropriate Authority
with whom recovery
proceedings is pending



Taxable Person

Case Study : 1



Proper Officer



Rs 25 Lakhs

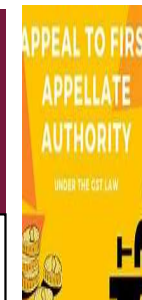
Recovery Proceedings are initiated u/s 79 of CGST Act 2017



Taxable Person



Application by P.O. or Taxable Person to



ENHANCED / REDUCED DEMAND



Taxable Person

Solution



Whether Taxable Person shall be required to issue **"FRESH NOTICE FOR RECOVERY U/s 79"**?

For Recovery Proceedings u/s 79, Fresh Notice is **"NOT REQUIRED"**

Proceedings shall continue from the stage at which such proceedings stood immediately before such disposal;

Case Study : 2



In which form, officer shall issue

Order of Enhancement or Reduction of Demand?

Solution

GST Commissioner

Shall issue Order in

Form GST - DRC 25



Taxable Person

FORM GST DRC – 25*[See rule 161]*

Reference No << --- >>

<<

Date >>

To

GSTIN -----

Name -----

Address -----

Summary.

Section 84 of CGST Act 2017

If Amount of Tax, Interest and Penalty is
"REVISED" in Appeals or Revision Application

Enhancement of Demand

Reduction of Demand

Notice of Demand for **Differential Amount**

Only **Intimation** to Taxable Person and Appropriate Authority

For Recovery Proceedings u/s 79, Fresh Notice is **"NOT REQUIRED"**

Recovery Proceedings shall continue from stage at which such proceedings stood immediately before such disposal;

Commissioner shall issue order of enhancement or reduction of demand **in Form GST DRC 25.**

SUMMARY OF CHAPTER

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graph TD; A[SUMMARY OF CHAPTER] --> B[Section 73 of CGST Act 2017]; A --> C[Section 74 of CGST Act 2017]; A --> D[Section 75 of CGST Act 2017]; A --> E[Section 76 of CGST Act 2017]; A --> F[Section 77 of CGST Act 2017]; B --> B1[Non-payment/short payment etc on account of Reasons other than fraud, willful misstatement or suppression of facts]; C --> C1[Non-payment/short payment etc on account of Reasons of fraud, willful misstatement or suppression of facts]; D --> D1[General Provisions relating to Determination of Tax]; E --> E1[Tax Collected but not Deposited]; F --> F1[Tax wrongfully collected and paid to Central Government or State Government];
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Section 73 of CGST Act 2017

Non-payment/short payment etc on account of Reasons
other than fraud, willful misstatement or suppression of facts

Section 74 of CGST Act 2017

Non-payment/short payment etc on account of
Reasons of fraud, willful misstatement or suppression of facts

Section 75 of CGST Act 2017

General Provisions
relating to
Determination of
Tax

Section 76 of CGST Act 2017

Tax Collected but not Deposited

Section 77 of CGST Act 2017

Tax wrongfully collected and paid to Central Government or State Government