

**GST COURSE**

# **DEMAND & RECOVERY**

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9819122318



**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

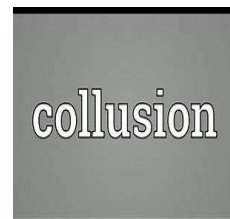


Fake Shipping Bill

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%**

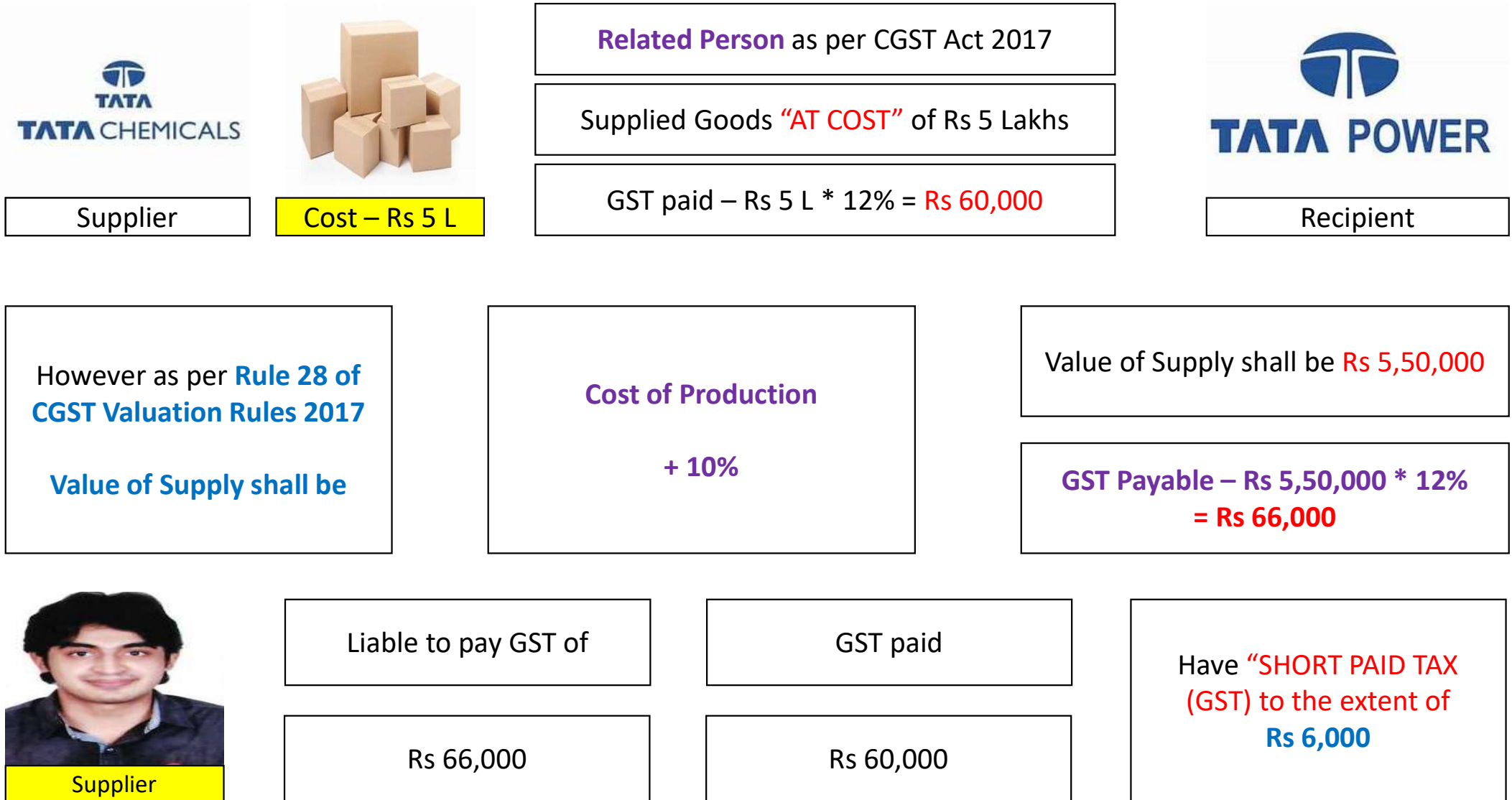
R.P. was **liable to pay**  
GST @ 18%



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.

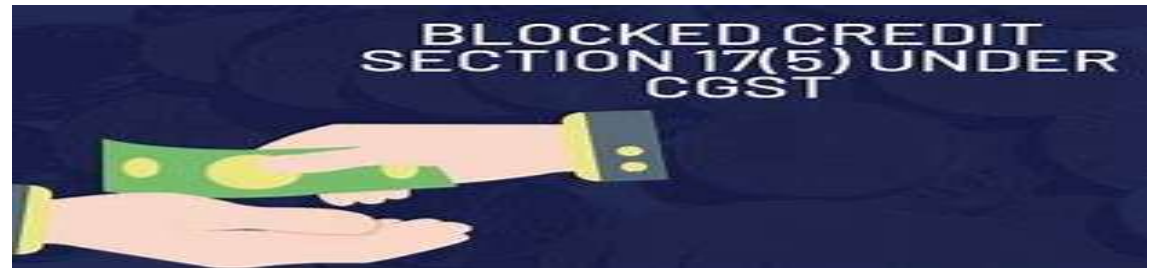


Registered Person



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).**

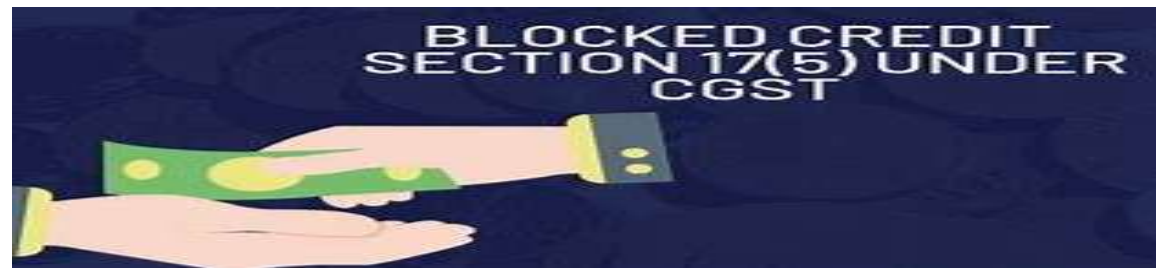


Registered Person



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

01<sup>st</sup> 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		2. Name		3. Date of Payment		4. Section under which voluntary payment is made		5. Details of show cause notice, if payment is made within 30 days of its issue		6. Financial Year		7. Details of payment made including interest and penalty, if applicable (Amount in Rs.)		8. Date of Issue	
Sr.	No.	State	Entity	DD/MM/YY	Section	Voluntary	Reference No.	Reference No.	Reference No.	2017-2018	2017-2018	2017-2018	2017-2018	2017-2018	2017-2018
1	1	IN	14AIPR1322Z	14/12/2021	73(1) Voluntary										

On 25th December 2021

# GST DEPARTMENT

“WITHIN 30 DAYS” of Issuance of SCN

### 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 <sup>st</sup> December 2021	01 <sup>st</sup> August 2023	01 <sup>st</sup> 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 <sup>st</sup> August 2023	01 <sup>st</sup> 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 1<sup>st</sup> April 2022

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**Case Study: 3 – Continued.**

**GST DEPARTMENT**



U/s 73 of CGST Act 2017

**GST FORM DRC-01**

01<sup>st</sup> 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



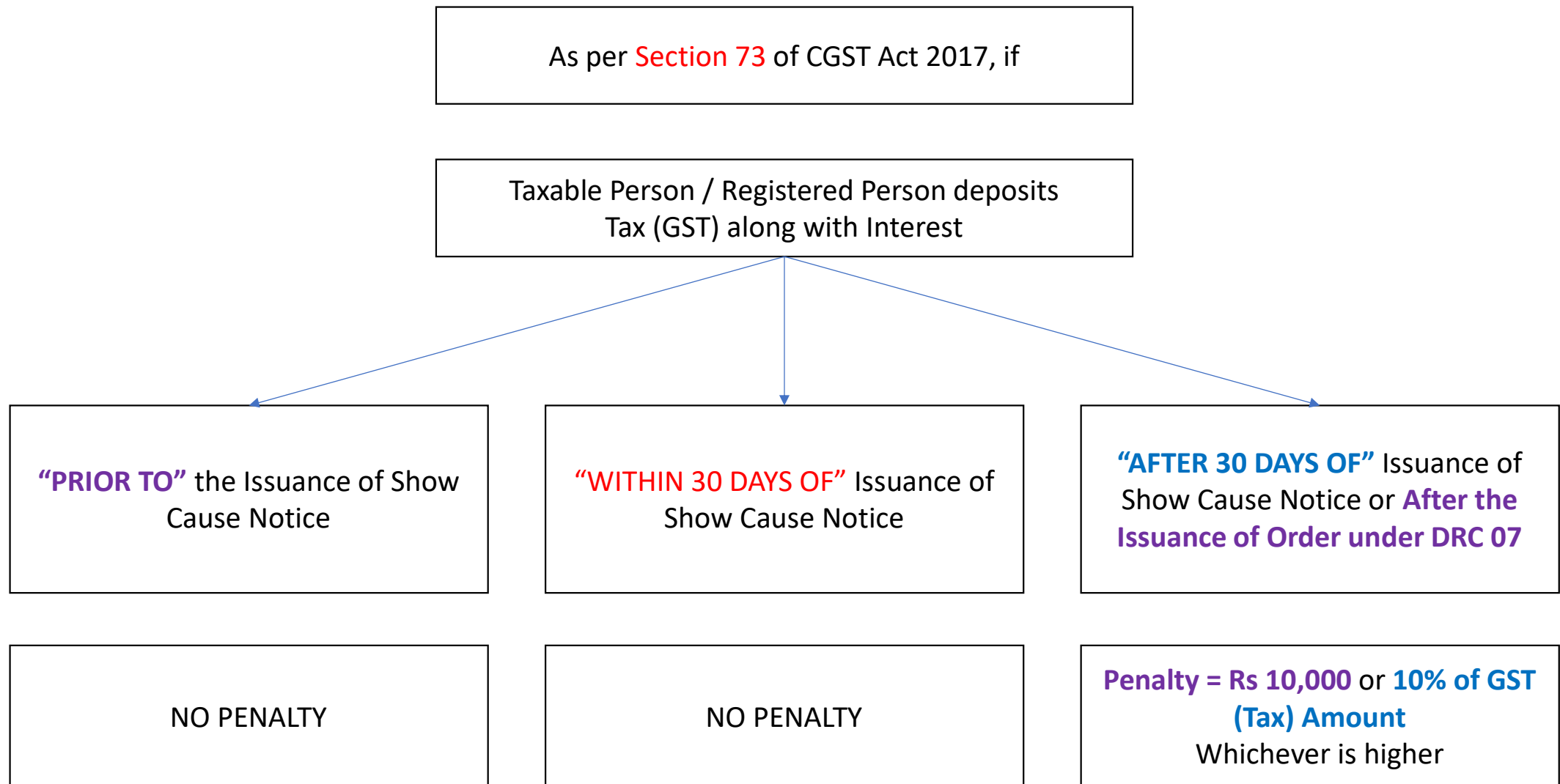
SHALL LEVY PENALTY

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

Since Registered Person has  
**paid GST along with Interest**

**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?

**"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  
01<sup>st</sup> January 2022

Demand Tax (GST) Amount  
= Rs 50 Lakhs

Paid GST along with Interest on  
**31<sup>st</sup> 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



01<sup>st</sup> January 2022

Demand Tax (GST) Amount

= Rs 20,000



Registered Person

Paid GST along with  
Interest on  
1<sup>st</sup> 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

01<sup>st</sup> April 2021

01 April 2021



Proper Officer



Issued SCN u/s 73

30<sup>th</sup> April 2022

order.

30<sup>th</sup> July 2022



Taxable Person

Paid GST to govt on

10<sup>th</sup> 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

31<sup>st</sup> December 2022

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

+ 3 Years

31<sup>st</sup> 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

**31<sup>st</sup> December 2024**

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

+ 3 Years

**31<sup>st</sup> December 2027**

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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

31<sup>st</sup> December 2022

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

+ 3 Years

31<sup>st</sup> December 2025

Hence SCN is to be  
issued by

Less: 3 Months

30<sup>th</sup> 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

31<sup>st</sup> December 2024

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

+ 3 Years

31<sup>st</sup> December 2027

Hence **SCN** is to be issued by

Less: 3 Months

30<sup>th</sup> 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

31<sup>st</sup> December 2023

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

+ 3 Years

31<sup>st</sup> December 2026

Hence **SCN** is to be issued by

Less: 3 Months

30<sup>th</sup> September 2026



Proper Officer



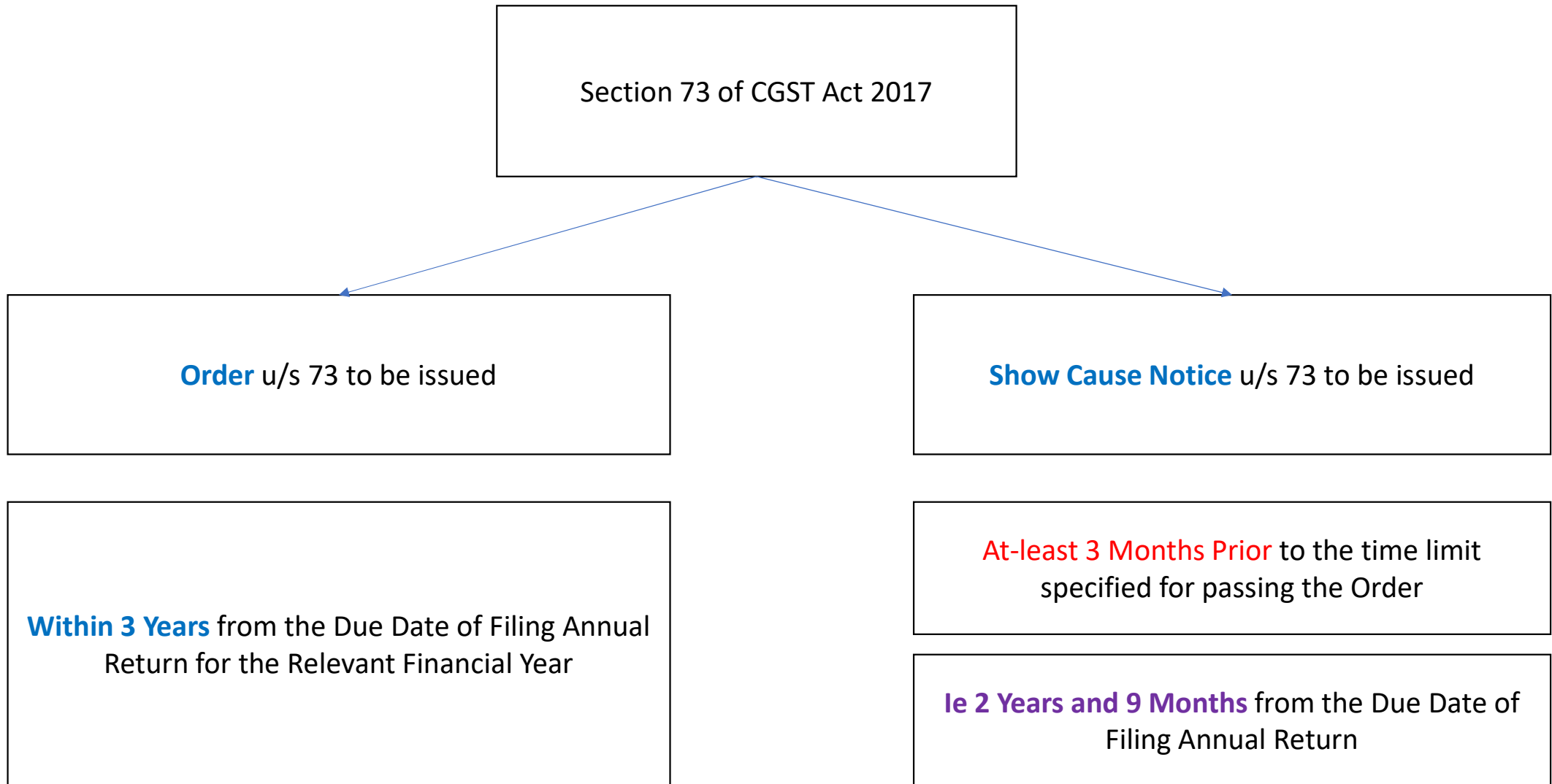
31<sup>st</sup> October 2026

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**



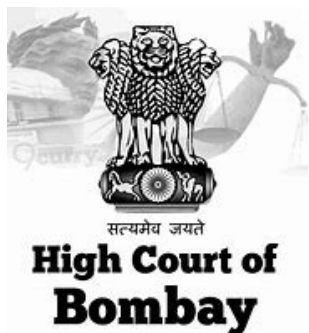
Till 20/06/2018 (1 Year)

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

Period of Stay ie  
1 year shall be  
excluded

Hence Order may be issued till

**1 Year**

**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

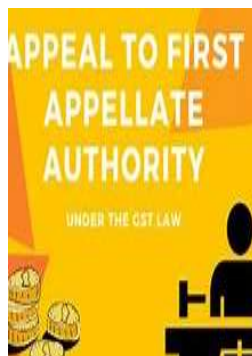
**order.**

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 1<sup>st</sup>  
Adjournment** of Hearing



Proper Officer



Upto

**20/01/2022**



Taxable Person

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



Proper Officer



Upto

**10/02/2022**



Taxable Person

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



Proper Officer



Upto

**31/03/2022**



Taxable Person

On 31/03/2022,  
**Requested for 4<sup>th</sup>  
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 3<sup>rd</sup> 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.

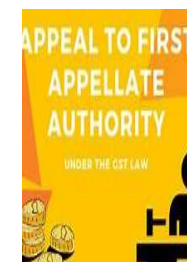
Tax –  
Rs 1 L

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

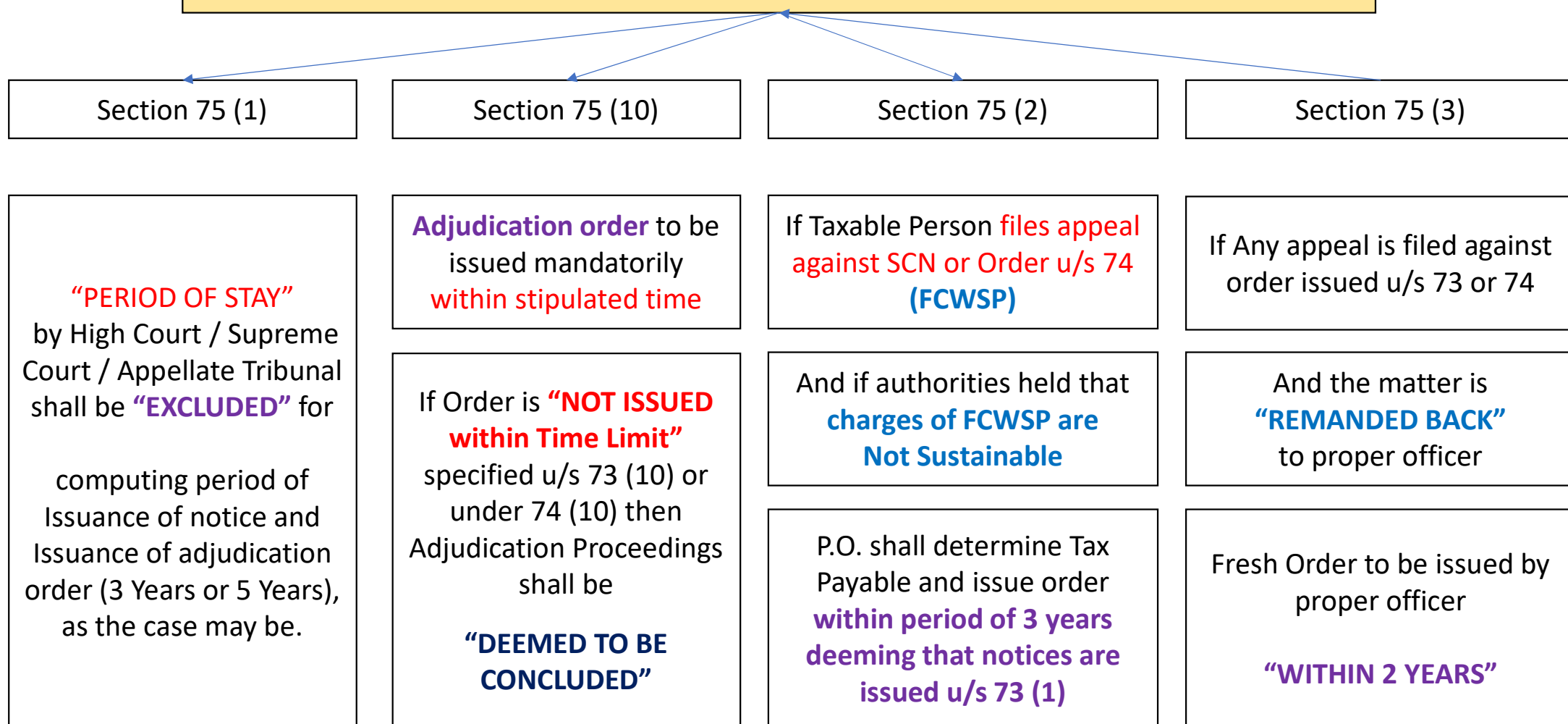
Where any penalty is imposed under  
section 73 or section 74

**“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.

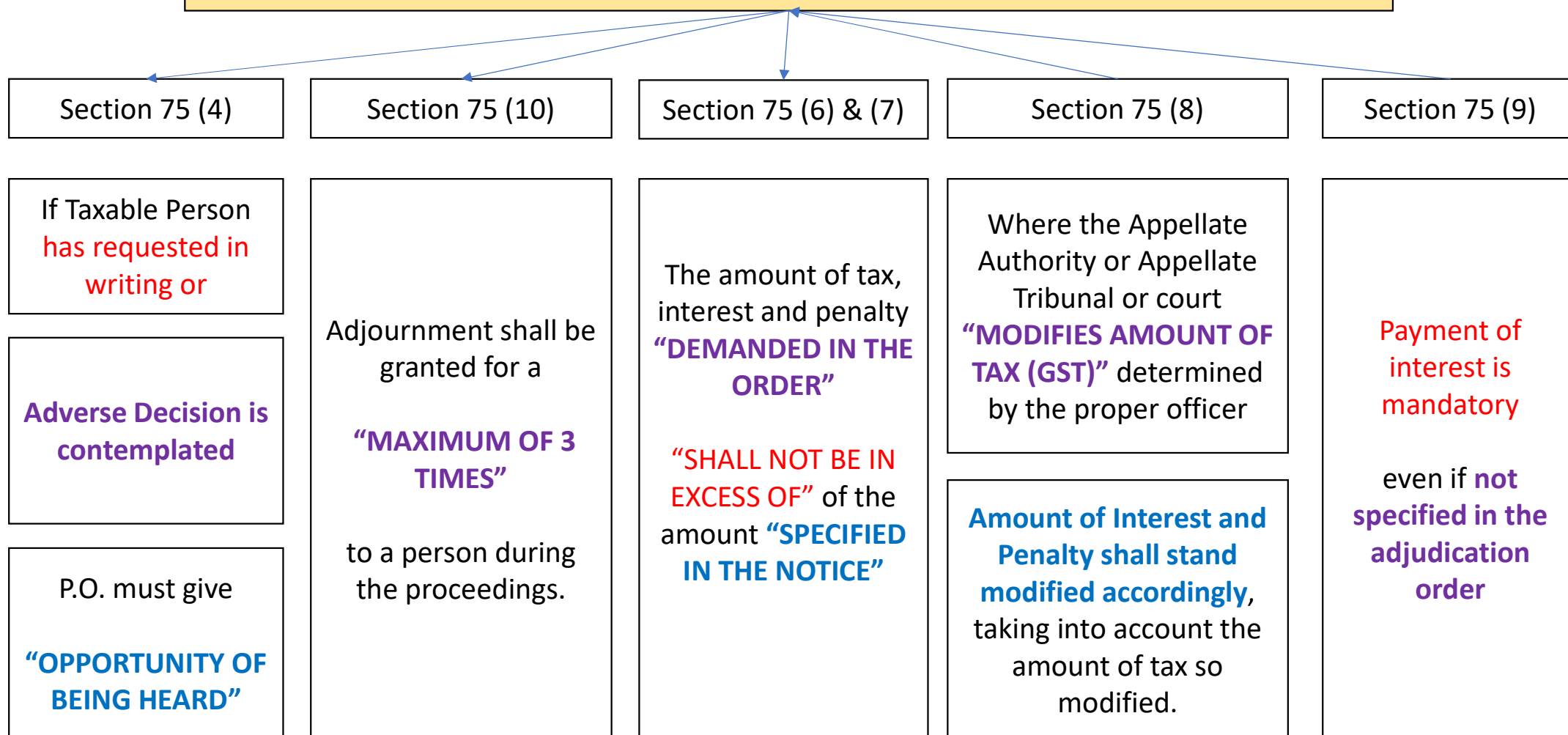
### Section 75 of CGST Act 2017 – General Provisions relation to Determination of Tax





## 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  
**“31<sup>st</sup> 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

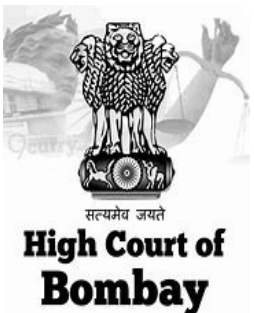
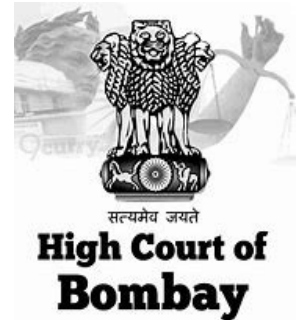
30/09/2023



Builders



01/10/2022



Upto September 2024 (2 Years)

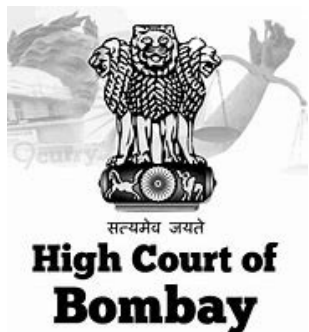
Order **Cannot be Issued** till the Period  
of Stay Issued ie 30/09/2024

**(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**

01<sup>st</sup> April 2021

01 April 2021



Proper Officer



Issued SCN u/s 76

30<sup>th</sup> Sept 2025

order.

30<sup>th</sup> July 2026



Taxable Person

Paid GST to govt on

31<sup>st</sup> 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

Interest

Penalty

Administrative  
Expenses

TOTAL

Rs 25 L

Rs 10 L

Rs 8 L

Rs 7 L

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)
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#### 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



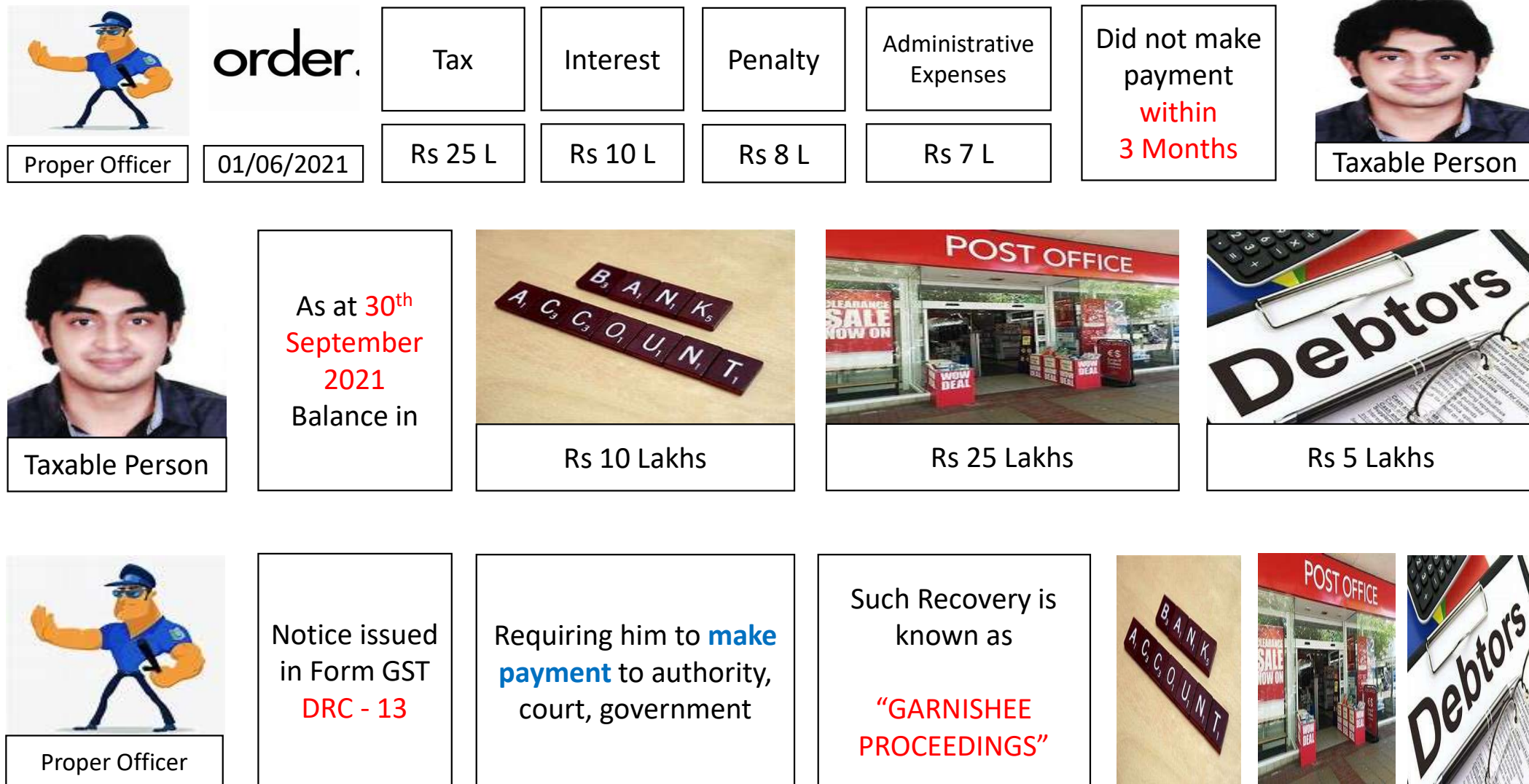
Proper Officer

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

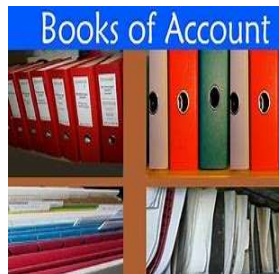
Name

### FAQ: 3.



Taxable Person

As at **30<sup>th</sup>**  
**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

30<sup>th</sup> September 2021

**IMMOVABLE PROPERTY**



Movable Property

Market Value – Rs 10 Crores



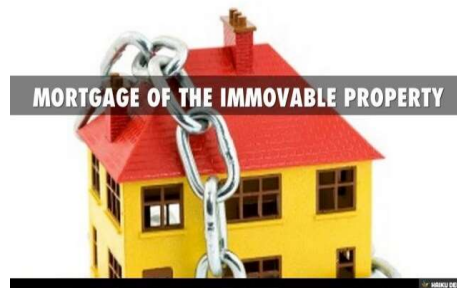
Proper Officer

**SEIZE**

**SEALED**

DISTRAIN  
(Take Possession)

**IMMOVABLE PROPERTY**



Movable Property





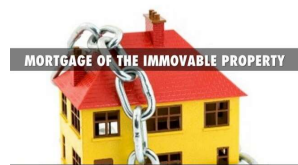
**Method 4 – Recovery by sale of Movable / Immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154].**



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

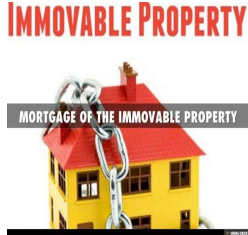
ATTACHMENT SEIZE



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

25<sup>th</sup> November 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 01<sup>st</sup> April 2022

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

“1<sup>st</sup> April 2022 to 30<sup>th</sup> 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 30<sup>th</sup> 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:

<b>Demand ID</b>	
------------------	--

---

### **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.

Demand in Order issued by P.O.			
Tax	Interest	Penalty	TOTAL
Rs 20 L	Rs 3 L	Rs 2 L	Rs 25 L



Whether facility for payment in instalments shall be granted for

OR

TOTAL

Rs 25 L

### 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,**

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 01<sup>st</sup> 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”**

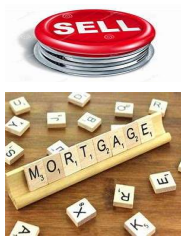
## Case Study: 2



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



9819122318

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

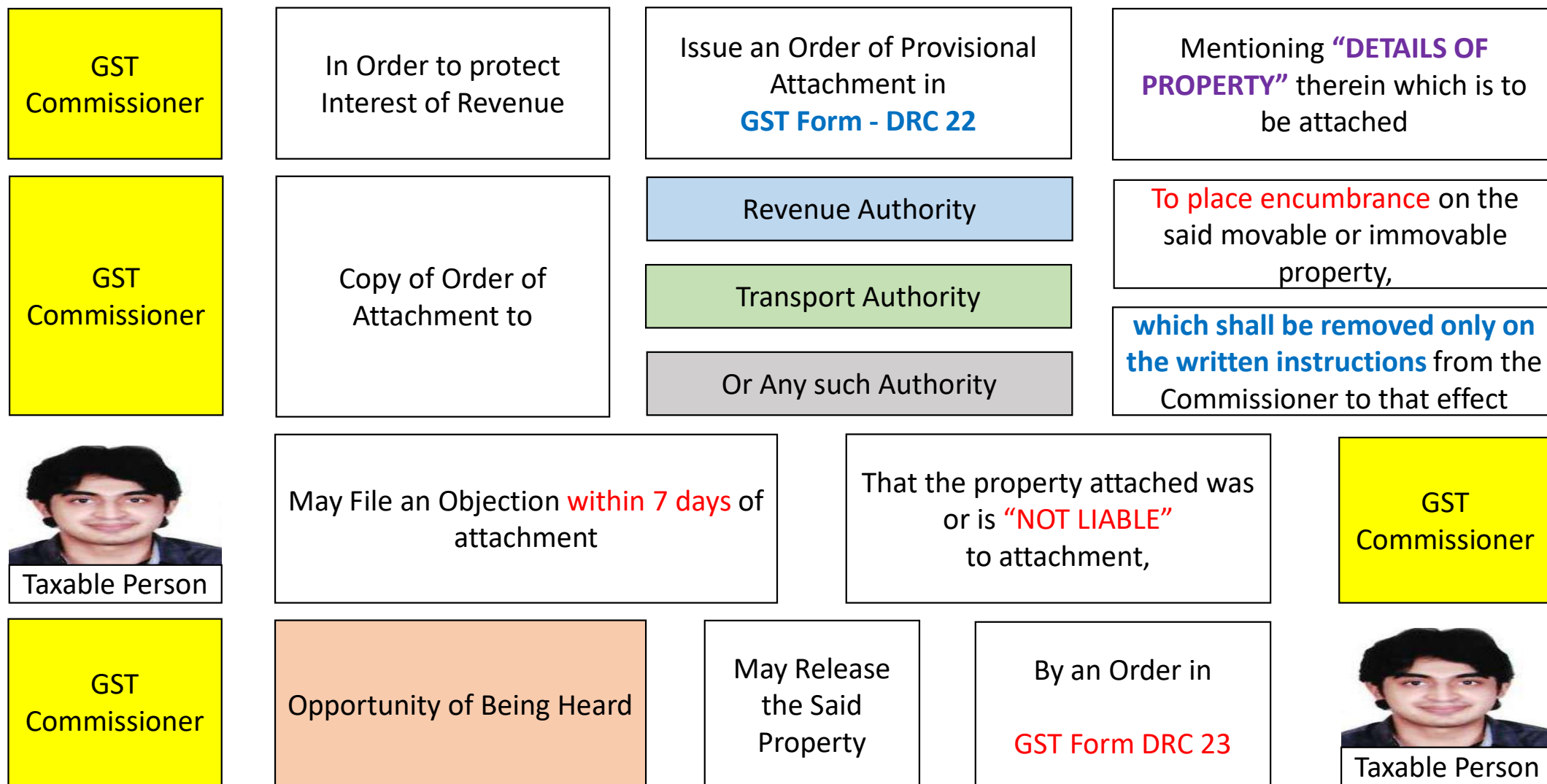
**SHALL NOT** BE ABLE TO

**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), 159(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**

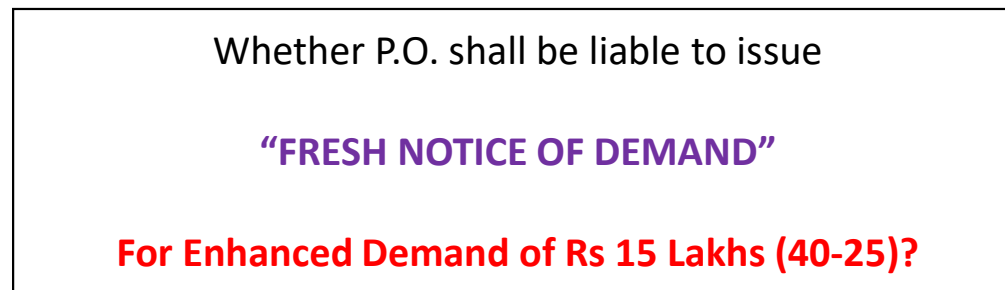
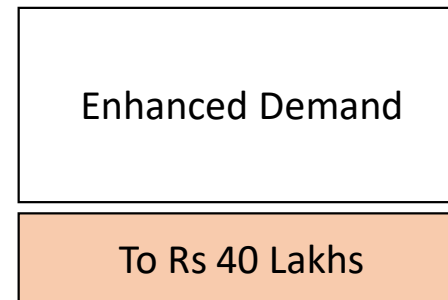
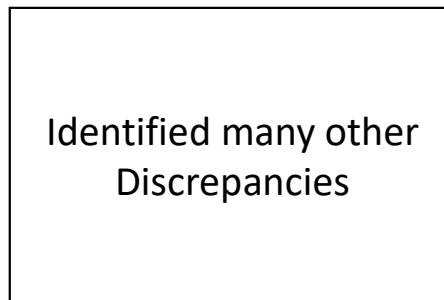
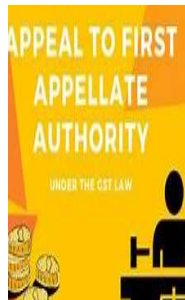
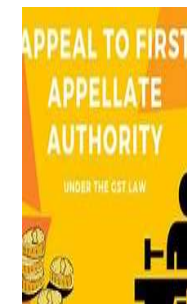
Please refer to the attachment of << saving / current / FD/RD>> account in your << bank/post office/financial institution>> having account no. <<----- >>, attached vide above referred order, to safeguard the interest of revenue in the proceedings launched against the person. Now, there is no such proceedings 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.

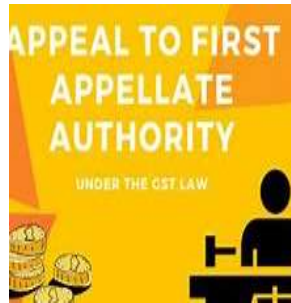
Continuation of Validation of Certain Recovery Proceedings.

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



**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



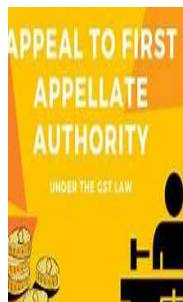
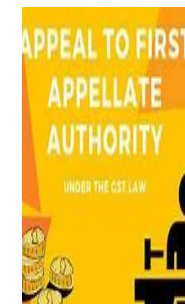
Rs 25 Lakhs



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

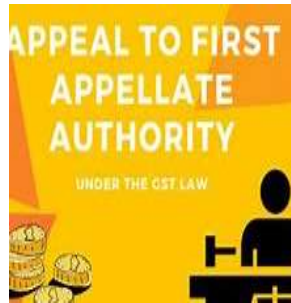
**“CANCEL NOTICE OF DEMAND OF Rs 25 LAKHS”**

**& 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

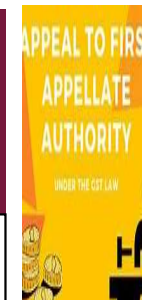
Recovery Proceedings are initiated u/s 79 of CGST Act 2017



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 &lt;&lt; --- &gt;&gt;

&lt;&lt;

Date &gt;&gt;

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

Notice of Demand for **Differential Amount**

Reduction of Demand

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