

# Demands & Recovery

A 3D bar chart with a city skyline background. The chart features several blue bars of varying heights and one prominent red bar on the right side. The bars are arranged in a row, and the red bar is the tallest, standing out from the others. The background shows a faint city skyline with various building silhouettes.

**Rohit Kumar Singh**

**ACA, ACMA, FCS, LLB (Gold Medalist), DISA (ICAI)**

# **Demand & Recovery**

**Section 73 to 84**

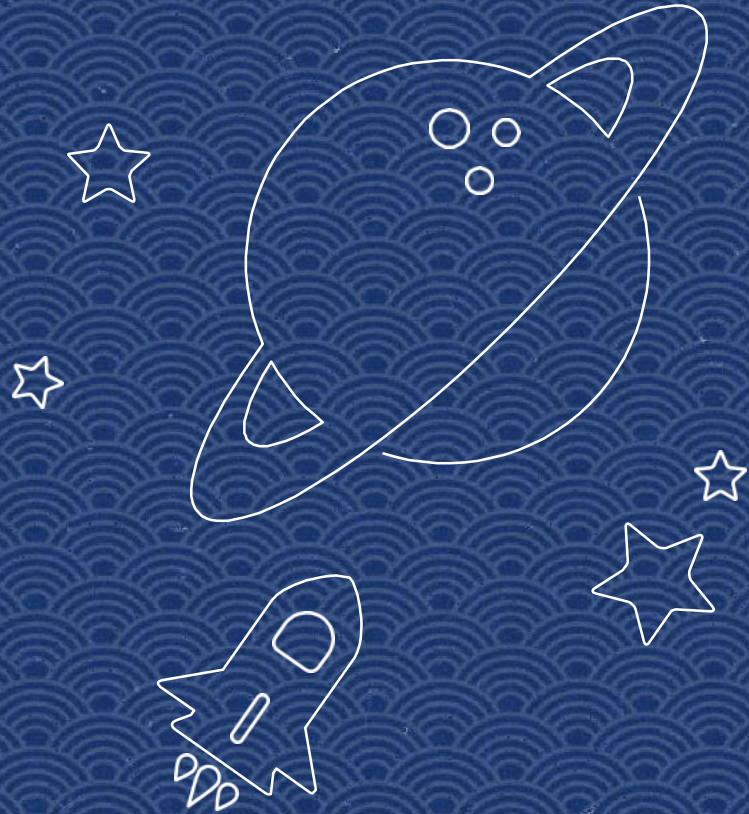
**Rule 142 to 161**

## What is Show Cause Notice?

### SHOW CAUSE NOTICE

- ◎ SCN
- ◎ A notice served on the tax payer
- ◎ Asking him
- ◎ To show cause
- ◎ As to Why
- ◎ A particular action should not be taken
- ◎ by the department.
- ◎ [Action –Cancellation, Demanding Tax, Denial of Option, etc]





# SECTION 73

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts



# Section 73(1)

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



# Section 73(1)... Contd..

- requiring him to show cause
- as to why
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty leviable as per the provisions of the Act.



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

**Section 73(2)  
to be read with  
Section 73(10)**

**73(2)**

*“at least three months  
prior to the time limit  
specified in sub-section  
(10) for issuance of  
Order”*

**73(10)**

within three years from the  
due date for furnishing of  
annual return for the  
financial year to which the  
tax relates to

or

within three years from the  
date of erroneous refund.

## Section 73(3)

**Statement in Lieu of A Full Fledged SCN.**

**Note: 1<sup>st</sup> Year SCN has to be issued.**

**Mr. X a Tax Payer**

Received Notice for the Financial Year 2017-18

For wrong availment of ineligible Credit.

Same Mistake Continues in 2018-19 and 2019-20

**What will department do?**

It has already issued a SCN for the Fin. Year 2017-18.

Should it again issue a detailed SCN for the subsequent period?

**The Answer is NO.**

**73(3) Authorises an Officer**

**To issue a “Statement” containing the details of the tax demanded or ITC to be reversed.**

**“Statement of Demand”**

**Section 73(4)→**

**Deems the issuance of Statement as “service of notice” only if grounds relied upon for such tax periods are the same as are mentioned in the earlier notice for the 1<sup>st</sup> year.**



**TAX PAYER:** (Before Issuance of SCN / Statement) Officer Officer, Please Wait...

Kindly accept this letter.... I have paid the **ENTIRE** taxes and interest as ascertained by me/you. I am submitting the necessary challan copies too... Kindly let me go.

**OFFICER:** Thank you Gentleman.

I need not / cannot issue any SCN or Statement.

**TAX PAYER:** Hurray...!!!! No Penalty!!!



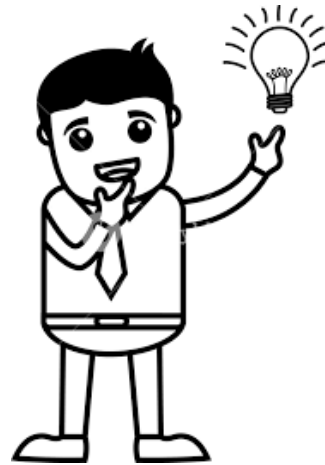
Section  
73(5)\*  
&  
73(6)\*



**Section**  
**73(7)\***

**OFFICER:** Gentleman, We have gone through your letter and it is seen that you have not paid the full amount (Tax / Interest). Hence, we have issued a SCN, demanding the balance amount.

**TAX PAYER:** Sir..... Sir.....  
Now what do I do???.....)





**TAX PAYER:** (After Issuance of SCN / Statement)  
Officer Officer,

**Section 73(8)\*** Kindly accept this letter.... I have paid the **BALANCE** taxes and interest as demanded in the notice **WITHIN 30 DAYS OF ISSUANCE OF notice / statement.** I am submitting the necessary challan copies too... Kindly drop the penalties please....

**OFFICER:** Thank you Gentleman. The notice is deemed to be concluded and No Penalty shall be payable by you.

**TAX PAYER:** Hurray...!!!! No Penalty!!!`





# \*Conditions for No Penalty

Only where the TAX AMOUNT IS OTHER THAN

self-assessed tax

or

any amount collected as tax

Which is not been paid within a period of thirty days from the due date of payment of such tax.

i.e. Input Tax Credit or Tax not collected or not assessed

What is the amount is self assessed tax or it is an amount which is collected as tax?

Sec 73(9) read with 73(11) Says:  
The officer shall issue an order demanding tax, interest and penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher.



# What if:

- Tax Payer does not pay up the taxes along with interest
- Either before issuance of SCN/Statement
- Or
- After issuance but within 30 days from the issuance of notice?
- Where the tax payer contests the issue, after considering the representations made by the tax payer, the officer shall determine the tax amount along with interest and 10% of tax amount or Rs.10,000/- which ever is higher and issue an order.



# SECTION 74

Determination of tax not paid or short paid  
or erroneously refunded or input tax credit  
wrongly availed or utilized by reason of  
fraud or any wilful-misstatement or  
suppression of facts





# Section 74(1)

- Any tax
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- by reason of fraud or
- any wilful-misstatement or
- suppression of facts to evade tax,
- PROPER OFFICER shall serve notice on the person



# Section 74(1)... Contd..

- requiring him to show cause
- as to why
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty equivalent to the tax. **(100% of Tax as Penalty)**



What is the Time  
Limit for  
Issuance of  
Notice?

Section 74(2)  
to be read with  
Section 74(10)

74(2)

*“at least SIX months  
prior to the time limit  
specified in sub-section  
(10) for issuance of  
order”*

74(10)

within a period of FIVE YEARS  
from the due date for furnishing  
of annual return for the financial  
year to which the tax relates to  
or  
within FIVE YEARS from the  
date of erroneous refund.



## Section 74(3)

**Statement in Lieu of A Full Fledged SCN.**

**Note: 1<sup>st</sup> Year SCN has to be issued.**

**Section 74(4)→**

**Mr. X a Tax Payer**

Received Notice for the Financial Year 2017-18

For excess availment of input tax Credit.

Same Mistake Continues in 2018-19 and 2019-20

**What will department do?**

It has already issued a SCN for the Fin. Year 2017-18.

Should it again issue a detailed SCN for the subsequent period?

**The Answer is NO.**

**74(3) Authorises an Officer**

**To issue a “Statement” containing the details of the tax demanded or ITC to be reversed.**

**“Statement of Demand”**

**Deems the issuance of Statement as “service of notice” only if grounds relied upon for such tax periods except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax are the same as are mentioned in the earlier notice for the 1<sup>st</sup> year.**



**TAX PAYER:** (Before Issuance of SCN / Statement)  
Officer Officer, Please Wait...

Kindly accept this letter.... I have paid the **ENTIRE**  
taxes and interest as ascertained by me/you.

Section

74(5)\*

&

74(6)\*

Along with **15% Penalty** I am submitting the  
necessary challan copies too... Kindly let me go.

**OFFICER:** Thank you Gentleman.

I need not / cannot issue any SCN or Statement.

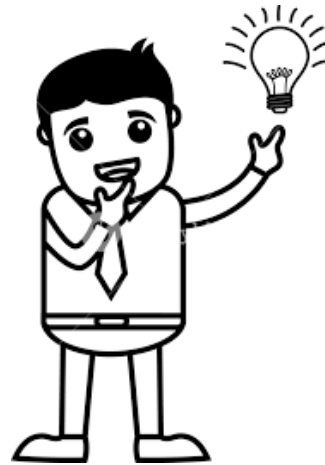
**TAX PAYER:** Thank God. **Escaped with 15%**





**OFFICER:** Gentleman, We have gone through your letter and it is seen that you have not paid the full amount (**Tax / Interest/Penalty**). Hence, we have issued a SCN, demanding the balance amount. Here is your copy.

**TAX PAYER:** Sir..... Sir.....  
Now what do I do???.....)





**TAX PAYER:** (After Issuance of SCN / Statement)

Officer Officer,

Kindly accept this letter.... I have paid the **BALANCE** taxes  
**Section** and interest **ALONG WITH 25% Penalty** as demanded in the  
**74(8)\*** notice **WITHIN 30 DAYS OF ISSUANCE OF** notice /  
statement. I am submitting the necessary challan copies  
too... Kindly drop the notice....

**OFFICER:** Thank you Gentleman. The notice is deemed to  
be concluded.

**TAX PAYER:** Thank God. Missed 15%, Escaped with 25%

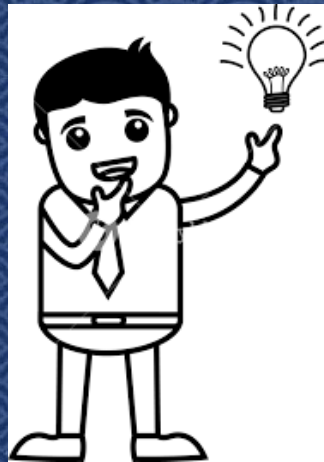




# Issuance of Order - 74(9)

- After considering the representations made by the tax payer,
- the officer shall determine the tax amount along with interest and penalty due and
- issue an order.

- What's NEXT????





# Quantum of Penalty - Quick Revision

Section 73: Without fraud or willful-misstatement or suppression of facts	
Situation	Penalty Amount
Before issuance of show cause notice	No penalty
Within 30 days after the issuance of the show cause notice	No penalty
After 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs. 10,000 whichever is higher

Section 74: With fraud or willful-misstatement or suppression of facts	
Situation	Penalty Amount
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of the show cause notice	25% of the tax amount
Within 30 days from the issuance of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)



# SECTION 74A

Determination of tax not paid or short paid  
or erroneously refunded or input tax credit  
wrongly availed or utilised for any reason  
pertaining to Financial Year 2024-25  
onward





## **Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

74A. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.



## **Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

- (2) The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.
- (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.



## **Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

**(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,-**

- (i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher**
- (ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person**

**(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order**



**Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

**(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):**

**Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.**



## **Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

**(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, may,-**

- (i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder**
- (ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded**



**Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

- (9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,**
- (i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;**
  - (ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;**
  - (iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.**



## **Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

**(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable**

**(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax**

**(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.**



## **Section 74A - [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.**

### **Explanation 1 –**

- (i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132**
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded**

**Explanation 2.— For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer**



# Quantum of Penalty - Quick Revision

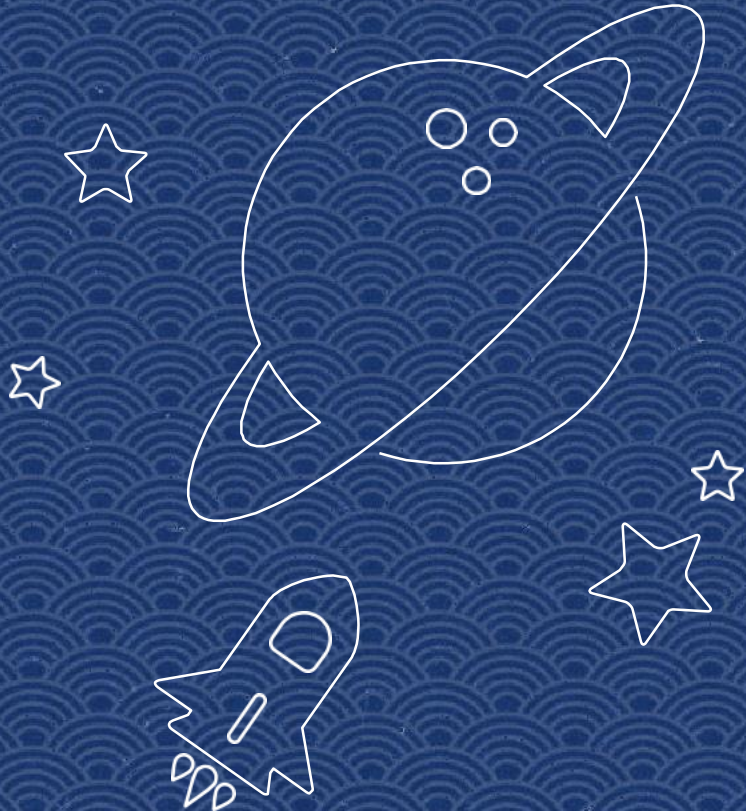
Section 74A: Without fraud or willful-misstatement or suppression of facts	
Situation	Penalty Amount
Before issuance of show cause notice	No penalty
Within 60 days after the issuance of the show cause notice	No penalty
After 60 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs. 10,000 whichever is higher

Section 74A: With fraud or willful-misstatement or suppression of facts	
Situation	Penalty Amount
Before issuance of show cause notice	15% of the tax amount
Within 60 days after the issuance of the show cause notice	25% of the tax amount
Within 60 days from the issuance of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)



# SECTION 75

General Provisions relating to Determination  
of Tax





# SECTION 75(4) - Personal Hearing

- An Opportunity of “being heard” shall be granted
- when a request is received in writing
- OR
- any adverse decision is contemplated against such person.



## **SECTION 75(5) - Adjournments**

- if sufficient cause is shown by the person chargeable with tax,
- Officer shall grant time to the said person and
- adjourn the hearing
- for reasons to be recorded in writing.
- Maximum –3 adjournments:

**SECTION 75(6) –** The proper officer, in his order, shall set out the relevant facts and the basis of his decision.



# SECTION 75(7) -Order Cannot Travel beyond SCN

- The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and
- no demand shall be confirmed on the grounds other than the grounds specified in the notice.



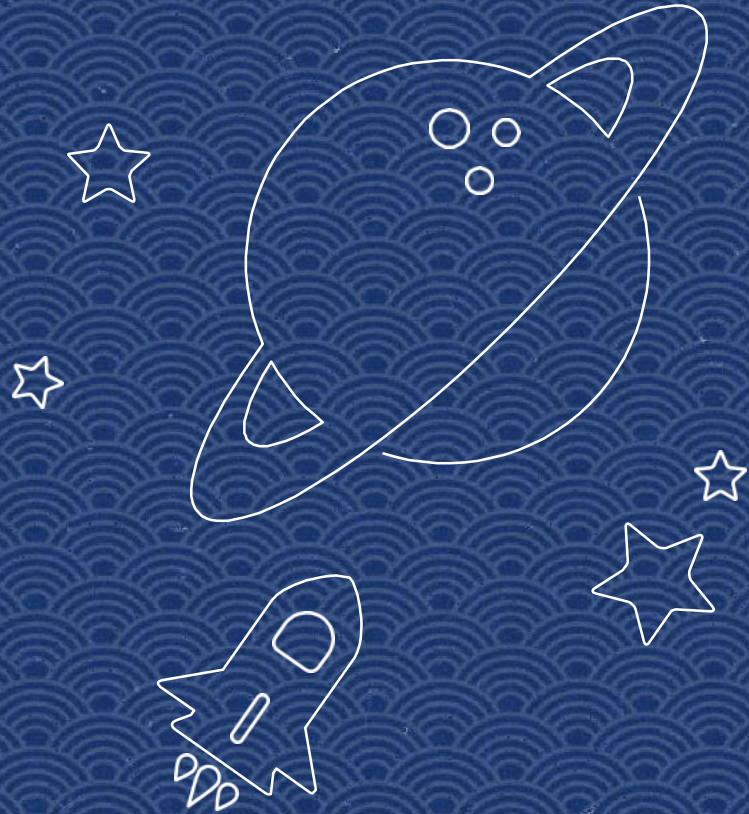
**Section  
75(11)**

There is an issue Which is decided against the Revenue

(1) Decided by	(2) Appeal Filed with	(3) Final Order by
Appellate Authority	Appellate Tribunal	Appellate Tribunal
Appellate Tribunal	High Court.	High Court.
High Court.	Supreme Court	Supreme Court

AND it has an implication on the case in hand, then,  
The time period between the order from the Col. (1) & Col. (3) shall be excluded from the time period of 3 Years / 5 Years as the case may be.





# SECTION 76

**Tax collected but not  
paid to Government.**



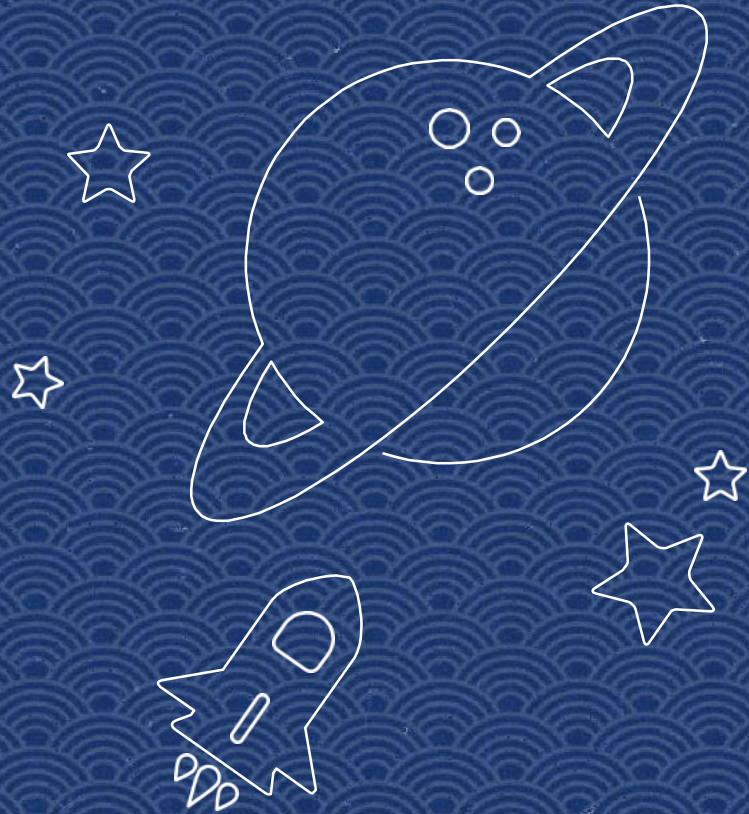
- Any amount representing tax shall be paid forthwith irrespective of the fact whether the supply was taxable or not.
- Proper Officer to Issue SCN asking why amount should not be demanded along with interest and penalty (100% of tax)
- After representation, officer to determine the amount and the person shall pay the amount so determined.
- Interest also to be paid as per Section 50.
- Personal hearing shall be granted where request is received in writing.
- Order to be issued within 1 Year from the date of issuance of SCN



- If issuance of order is stayed, the said period shall be excluded in calculating the one year time limit to pass the order.
- Proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- Person who has borne the incidence of tax shall claim refund as per Section 54.
- **NO MENS REA REQUIRED**
- **NO TIMELIMIT TO ISSUE NOTICE.**

**SECTION 76**





# SECTION 77

**Tax wrongfully collected  
and paid to Central  
Government or State  
Government.**



## Tax wrongfully collected and deposited with CG/SG - Revision

If a registered person has wrongly paid Central tax and State tax/ Union Territory tax on a transaction considered to be intra-state supply, which is **subsequently held to be inter-state**, shall be refunded the amount of taxes so paid.

Registered person who has paid integrated tax on a transaction considered to be inter-State supply, which is **subsequently held to be an intra-State supply**, shall not be required to pay any interest on the amount of central tax and State tax/Union territory tax.

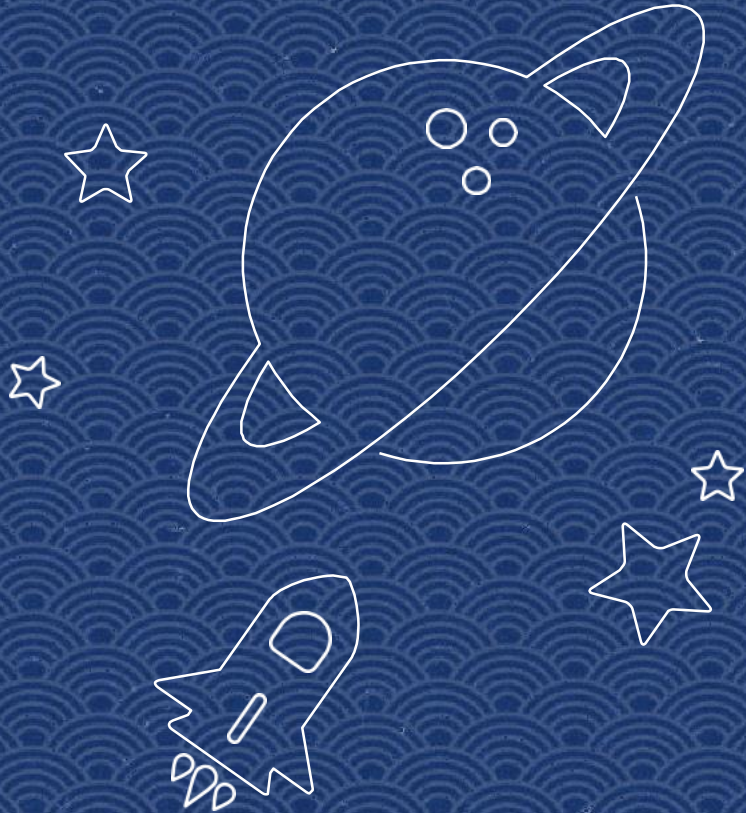
Inter-State Supply – Tax wrongly paid = CGST + SGST/UTGST instead of IGST  
Then refund of IGST may be claimed

Intra-State Supply – Tax wrongly paid = IGST instead of CGST + SGST/UTGST  
Then refund of CGST+SGST/UTGST may be claimed



# SECTION 78

**Initiation of recovery  
proceedings.**

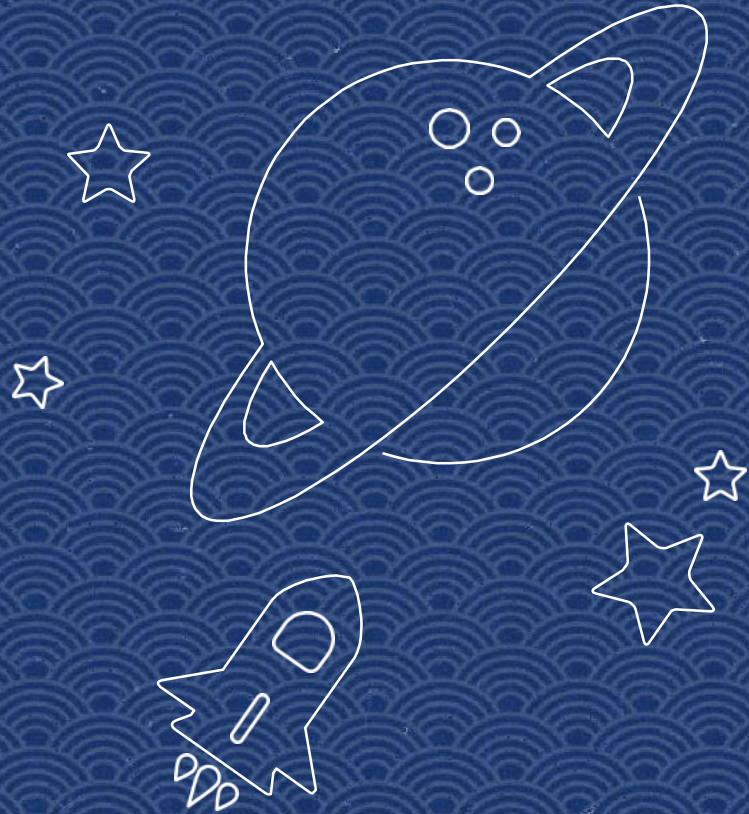




# SECTION 78

- Once an “order” is passed under this Act,
- Confirming the tax demand and/or interest and/or penalty
- The assessee shall pay the said amount within **THREE MONTHS** from the date of receipt of the order.
- If not paid, recovery proceedings shall be initiated.
- Proper Officer can give time less than three months to remit the tax in the interest of revenue (by mention in order).





# SECTION 79

## **Recovery of Tax**

### **R/w. Rule 143 to 157 of**

### **CGST Rules.**

### **All DRC Forms**



# SECTION 79 - Modes of Recovery

- a) Deducting from the amount due to the person.
- b) Detaining & Selling the goods of such person.
- c) Third party recovery viz., Debtors, Money holders
  - i) Everyone is bound by this notice whether it is Post Office, Bank, Insurance Co...
  - ii) No rules and regulations will be necessary.
  - iii) If not honoured, will be deemed to be a defaulter.



# SECTION 79 – Modes of Recovery

- iv. The Officer is empowered to revoke, amend the notice or extend the time for making payment at any time.
- v. If the person disobeys the notice and makes payment directly to the person in default shall be personally liable to Government. [Amt Paid / Amt Due by him w.e.l]
- vi. If nothing is due to person in default, he should prove to the satisfaction of the officer.
- vii. Officer can seize movable or immovable property of the person in default. If within 30 days even if part amount is not paid, the asset can be disposed by the officer.
- viii. Inform collector to collect as if arrears of land revenue
- ix. Inform Magistrate to collect as if it was a fine.



## SECTION 79 Contd....

- 2) Encashment of Bond / any Instrument executed
- 3) Any State / UT Officer is empowered to recover as if it was arrears of SGST/UTGST and remit to Government in such manner and proportion.



## SECTION 80 – Payment in Installments

- Application to be filed by the tax payer
- Commissioner to give order in writing
- By Extending / Allowing time to pay any amount
- **OTHER THAN “Liability self assessed in any return”**
- Max 24 Monthly Instalments subject to interest payment.
- Even if one month defaulted, extension stops and recovery begins –NO NOTICE.



# Transfer of property to be void in certain cases – Section 81

The said provision is for protecting the Government revenue by avoiding transfer of property by a taxable person to another person. This would prevent any attempt to defraud the revenue by alienating the properties.

- (i) The said provision would be applicable only when any tax would become due.
- (ii) The following acts done by a person, in favour of any another person, after the tax becomes due, would be void

Situations / cases – Void	Situations / cases – valid
Creates a charge on; or	Made for adequate consideration and
Parts with the property	Without notice of the pendency of proceeding
Belonging to him; or	Without notice of such tax or other sum payable by the said person,
In his possession By way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties.	With previous permission of the proper officer.

- (iii) The act shall be void, when it is or was with an intention of defrauding the Government Revenue.



## **Tax to be first charge on property – Section 82**

- (i) The provisions of this section would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Central or State Government;
- (ii) Any liability to be paid to the Central or State Government would be given priority in the matter of effecting recovery by placing a first charge on the property of the taxable person or any other person;
- (iii) This provision also covers any other person since there are many provisions in the CGST Act, which provide for creating a liability or recovery from a person other than the taxable person like a legal representative, member of partitioned HUF etc.



## Provisional attachment to protect revenue in certain cases – Section 83

(i) This section applies only during the pendency of any proceedings under

<b>Section 62</b>	<b>Assessment of non-filers of returns</b>
Section 63	Assessment of unregistered persons
Section 64	Summary assessment in certain special cases
Section 67	Power of inspection, search and seizure
Section 73	Determination of tax not paid or short paid or erroneously refunded other than fraud
Section 74	Determination of tax not paid or short paid or erroneously refunded in case of fraud

(ii) The provisional attachment of property of taxable person can be undertaken by the Commissioner;

(iii) The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Govt. revenue it is necessary to provisionally attachment the property;

(iv) Such provisional attachment is be valid for one year from the date of the order made by Commissioner.



## **Continuation and validation of certain recovery proceedings – Sec 84**

This section deals with continuation of proceedings, where a notice is already served for recovery of government dues upon a taxable person and upon any appeal, revision application there is reduction or enhancement of such Government dues.

(i) The section refers to –

- any notice of demand in respect of Government dues (tax, interest and penalty) served on taxable person; and
- any appeal, revision application is filed or other proceedings are initiated in respect of such Government dues.

**Further–**

- (a) such Government dues may be enhanced; or
- (b) reduced in such appeal, revision or in other proceedings

(ii) In such cases, the Commissioner shall –

- Serve another notice on the taxable person, in respect of the enhanced amount.



## **Continuation and validation of certain recovery proceedings – Sec 84**

- If notice of demand is already served on taxable person before such appeal, revision or any other proceedings, then recovery of enhanced amount would be continued from the stage at which the initial proceedings stood. There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.
- In case the Government dues are reduced in such appeal, revision or in other proceedings – the Commissioner
  - (1) Is not required to serve fresh notice of demand upon the taxable person;
  - (2) Shall intimate such reduction to taxable person and also to appropriate authority with whom recovery proceedings are pending;
  - (3) Any recovery proceedings are initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.



# **Prosecution under GST Laws**



# Prosecution – Sec 134, 135, 136 & 137

## COGNIZANCE OF OFFENCES [ Sec 134 ]

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

## PRESUMPTION OF CULPABLE MENTAL STATE [ Sec 135 ]

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



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

## **RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [ Sec 136 ]**

A statement signed by a person during the course of proceeding is relevant for proving the truth of the facts in any prosecution for an offence under this act.

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



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

## **OFFENCES BY COMPANIES [ SEC 137 ]**

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



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

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



Thank you

