

**DEMAND & RECOVERY UNDER THE  
CENTRAL GOODS & SERVICES TAX  
ACT, 2017 READ WITH RELEVANT  
STATE LAWS**

# **Chapter–XV**

## **Demand & Recovery**

- **Section 73 to 84**
- **Rule 142 to 161**

## Source document

### SHOWCAUSE NOTICE

#### What is Show Cause Notice?

**A notice is being issued to the taxpayer**

Asking the tax payer

To show cause

As to Why

A particular action should not be taken  
by the department.

Against the Cancellation of Registration, against the demand of Tax, interest and  
penalty

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 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**

**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)** Received for the F.Y. 2017-18 It has already issued
- **Statement in Lieu** SCN for the F.Y.2017-18
- **of A Full Fledged**
- **SCN.**
- **For wrong availment of** Should it again issue a detailed
- **ineligible Credit** SCN for the subsequent period
- **Note:1stYear SCN has** same mistake continues
- **to be issued** in subsequent year
- **No**
- **Authorises an Proper 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 1st year.**

# • **Section 73(5) and Section 73(6)**

- Before Issuance of SCN / Statement if the tax payer paid the entire taxes and filled DRC-03 with forwarding letter that
- Kindly accept this letter....
- I have paid the **ENTIRE** taxes along with interest as ascertained by me/you. I am submitting the necessary challan copies too...
- Kindly intimate accordingly.
- **OFFICER: Thank you Honourable Tax payer.**
- **And no need to issue any SCN or Statement of Demand.**
- **Penalty will not be charged thereon**

## • **Section 73(7)**

- **OFFICER: Honorable Taxpayer** I have gone through
- Your letter and it is seen that you have not
- Paid full amount of Tax/Interest. Hence, I have to issue a SCN, demanding the balance amount.
- **TAX PAYER:** Sir.....
- Now what is the remedial measures thereon ?

## • **Section 73(8)**

- Kindly accept this letter.... I have paid the balance due taxes and interest as demanded in the notice
- **73(8) WITHIN 30 DAYS OF ISSUANCE OF notice/statement.** I am submitting the necessary challan
- copies too... Kindly drop the penalties please....
- **OFFICER: Thank you Honourable tax Payer. The notice is deemed to be concluded and No Penalty shall be payable by you.**
- **TAX PAYER: Hurray...!!!! No Penalty!!!`**

- **Conditions for payment of tax with interest without penalty**
- **Tax paid other self assessment tax**
- **Or**
- **Any amount collected as tax which is not been paid within the period of thirty days from the due date of payment of such tax**
  
- **i.e.ITC or tax not collected**
  
- **IF Tax payer does not pay up the taxes along with interest**
- **Either before issuance of SCN or Statement**
- **Or**

- **After issuance but within thirty days from the issuance of notice**
- **When the assessee contests the issue after representation from the tax payer the Adjudicating authority shall determine the tax liability along with interest and charge penalty @10% of tax amount or Rs.10,000/- whichever is higher and issue an appropriate order but if paid within 30 days no penalty.**
- **And after 30 days 10% penalty**

- **Section 74**

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

- **Section 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 for reason of **fraud or any wilful-misstatement or suppression of facts** to evade tax, PROPER OFFICER shall serve notice on the person requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable (100% of tax ) as per the provisions of the Act.

- Time limit for issuance of Show Cause Notice
- Section 74(2) “at least six months prior to the issuance of order U/s 74(10)
  
- Section 74(10)
- Within a period of five years from the due date of furnishing of Annual Return for the F.Y. to which the tax relates to
- Or
- Within five years from the date of erroneous refund

- **Before the issuance of SCN/Statement**
  - **Section 74(5) Tax interest and penalty @15% of tax**
  - **Section 74(6) Acknowledgement of the department**
  - **And the requirement of issuance of Show Cause notice is dropped.**
- 
- **After issuance of Show cause Notice**
  - **Section 74(7) Tax not paid or party paid**
  - **Section 74(8) if tax is paid within 60 days penalty levied 25% of Tax**

- **Issuance of order Section 74(9)**
- **After representation by the assessee the department compute the tax interest and penalty also and issue an order.**

- **Quantum of penalty U/s 73 vis-à-vis Section 74**

• <b>Description</b>	<b>Section 73</b>	<b>Section 74</b>
• <b>Before issuance of Show cause Notice</b>	<b>No penalty</b>	<b>15%</b>
• <b>Within 30 days after issuance of Show cause notice</b>	<b>No penalty</b>	<b>25%</b>
• <b>After 30 days after issuance of Show cause notice</b>	<b>10% or Rs.10,000/- whichever is higher</b>	<b>50%</b>
• <b>Within 30 days from the date of order</b>	<b>Do</b>	<b>50%</b>
• <b>Any other case</b>	<b>Do</b>	<b>100%</b>

- Section 74A w.e.f. 01.04.2024
- Being the merger of Section 73 and also Section 74
- **Till 31.03.2024 the two provisions were applicable independently**

- **Section 75**
- General Provisions in determination of tax
- Section 75(4) Personal hearing
- ----Notice is served in writing
- OR
- Any adverse decision is contemplated against such person

- **Section 75(5) Adjournments**
- If sufficient or reasonable cause is showing and the reason
- Maximum no of Adjournments ----- Three
  
- **Section 75(6)** The proper Office in his order shall set out the relevant facts and the basis on his decision
  
- **Section 75(7)** The quantum of the order cannot be enhanced beyond SCN AND
- No demand can be confirmed other than the grounds specified in the SCN
- **Section 75(11)** the time period of the appellate proceedings are excluded for the calculation of three years, forty two month of five years

# • **Section 76**

- **Tax collected but not paid to the 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**

- After representation officer to determine the amount and the tax payer shall pay the amount

Interest also payable U/s 50

Personal hearing shall be granted where request is received in writing

Order is required to be issued within one year from the date of issuance of SCN

If issuance of order is stayed the said period shall be excluded in calculating one year time 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 U/s 54

**NO MENS REA IS REQUIRED**

**NO TIME LIMIT TO ISSUE THE ORDER**

## **SECTION 77**

TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVT. OR STATE GOVERNMENT

EXAMPLE: INTRASTATE TAX SHOULD BE CHARGEABLE BUT WRONGLY PAID AS INTERSTATE I.E. instead of CGST and SGST paid IGST

Then paid again CGST and SGST and get Refund

Date of cause of refund arises from your last date of payment of tax and two years thereform

# • **SECTION 78 – INITIATION OF RECOVERY PROCEEDINGS**

- 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
- The Proper Officer can accord time which is less than three months to remit the tax in the interest of revenue (mentioning the order)

- **Section 79 Recovery of Tax read with Rule 143 to 157 of CGST Rules**

- **All DRC**
- **Mode of Recovery**
- **Deducting from the amount due to the person**
- **Detaining & Selling of Goods of such person**
- **Third party recovery ex Debtors Advance Money holders**
- **Everybody is bound by this notice whether it is bank or post office or any NBFC or Insurance Company**
- **No rules and regulations will be necessary**
- **If not honoured will be deemed to be a defaulter**
- **The Officer is empowered to revoke, amend the notice or extend the time for making payment at any time**

## • **Section 79 – Modes of Recovery Contd..**

- If the person disobeys the notice and makes payment directly to the person in default shall be personally liable to the Government
- If nothing is due to person in default, he should prove to the satisfaction of the officer
- Appropriate officer or the Recovery Officer can seize all movable and immovable properties of the person in default if within 30 days even if part amount is not paid, the asset can be disposed by the officer
- Inform collector to collect as arrear of land revenue
- Inform Magistrate to collect
- Encashment of any Bond Instrument executed
- Any state/UT Officer is empowered to recover as if it was arrears of SGSR/UTGST and also remit to the Government in such manner and such proportion

- **Section 80 - Payment by installments**
- **Application to be filled by the tax payer**
- **Commissioner is empowered to pass any order in writing**
- **By extending time to pay whatever the quantum of amount is applicable therein**
- **Other than “Liability self assessed in any return”**
- **Max 24 monthly installments subject to the interest payment**
- **Even if one month defaulted Extension seized and recovery resumes without any notice thereon**

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

- **Situations / cases –Void**

- 
- Creates a charge on; or
- Parts with the property
- Belonging to him; or
- 
- In his possession By way of sale,
- mortgage, exchange ,or any other
- mode of transfer whatsoever of
- any of his properties.

- **Situations / cases –valid**

Made for adequate consideration and  
Without notice of the pendency of proceeding  
Without notice of such tax or other sum payable by the  
said person,

With previous permission of the proper officer

- **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
- (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 attach the property;
- (iv) Such provisional attachment is to 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.

# **Prosecution under GST**

- **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 [Sec136]**

- 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 or is incapable of providing evidence
  - 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 evidence in the interest of 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

# Q & A SESSION

THANK YOU