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Sec 73(1) & 74(1) – Issue of Notice (SCN)

It provides for **Determination of tax**

Not Paid

Short-Paid

Erroneously
Refunded

ITC Wrongly
availed

ITC wrongly
utilised

74(1) applies when there is

- Fraud
- Wilful misstatement of facts or
- Suppression to evade tax

73(1) applies when those conditions do not exist

Issuance of SCN

- Proper officer has to serve notice
- On person chargeable with tax
- 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.

Sec 73(2) / 74(2) : Time Limit of Notice (SCN) &
Sec 73(10) / 74(10) : Time Limit for Issue of Order

The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

- Sec 73(10) - Order under 73(9) to be issued within three years from the due date for filing of annual return for the year to which the tax relates **or**, as the case may be, within three years from the date of erroneous refund.

The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

- Sec 74(10) - Order under 74(9) to be issued within five years from the due date for filing of annual return for the year to which the tax relates **or**, as the case may be, within five years from the date of erroneous refund.

Sec 73(2) / 74(2) : Time Limit of Notice (SCN) & Sec 73(10) / 74(10) : Time Limit for Issue of Order

Note – Last date of issuance of notice and order has been extended by using powers given by Sec 168A of CGST Act, 2017

FY	Last date to issue notice	Last date to issue order
FY 2017-18		
Original last date	5-11-2022/7-11-2022	5-2-2023/7-2-2023
Revised date (NN 13/2022-CT dt 5-7-2022)	30-6-2023 30-9-2023	30-9-2023 31-12-2023
Revised date (NN 09/2023-CT dt 31-3-2023)		
FY 2018-19		
Original last date	30-9-2023	31-12-2023
Revised date (NN 09/2023-CT dt 31-3-2023)	31-12-2023	31-3-2023
FY 2019-20		
Original last date	31-12-2023	31-3-2024
Revised date (NN 09/2023-CT dt 31-3-2023)	31-3-2024	30-6-2024

The Government has issued NN 13/2022-CT dated 5-7-2022, and has notified the following –

1. Time period from **1-3-2020 to 28-2-2022** to be excluded from calculation of the limitation period for issuance of demand order by the proper officer **in respect of erroneous refunds** under Sec 73 of the CGST Act.

Sec 73(3), 73(4), 74(3) & 74(4) : Statement of Demand (SOD)

Rule 142(1A) and Rule 142(2A)

Statement of Demand (SOD)

- Applies for periodical Notices
- Already Notice is issued for other period
- No need for another SCN
- Only statement enough containing details of tax/ITC
- Grounds relied upon is same as earlier SCN

New Rules for communication of tax details before service of notice

Rule 142(1A) The proper officer ~~shall~~ may, before service of notice to the person chargeable with tax, interest and penalty, under Section 73(1) or Section 74(1), as the case may be, ~~shall~~ may communicate the details of any tax, interest and penalty as ascertained by the said officer. **[Inserted vide Notification No. 49/2019-CT dated 9th Oct, 2019 w.e.f. 9-10-2019][the word 'shall' has been substituted by the word 'may' by NN 79/2020-CT,w.e.f. 15-10-2020][Effect of amendment w.e.f. 15-10-2020 is that now it is optional (not compulsory for the proper officer to serve pre-notice communication to the assessee.)]**

Rule 142(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission. **[Inserted vide Notification No. 49/2019-CT dated 9th Oct, 2019 w.e.f. 9-10-2019]**

Sec 73(5), 73(6) & 73(7), 74(5), 74(6) & 74(7) : Payment before SCN/SOD

Sec 73(8) / Sec 74(8): Payment within 30 days of SCN/SOD

Payment before SCN/SOD

<u>SEC 73(5),73(6) & 73(7)</u>	<u>SEC 74(5), 74(6) & 74(7)</u>
Tax along with applicable interest if paid	Tax, interest & 15% of tax as penalty if paid
On own ascertainment or as ascertained by proper officer	On own ascertainment or as ascertained by proper officer
Informed the department in writing	Informed the Department in writing
No SCN/SOD to be issued for tax or penalties	No SCN/SOD to be issued for tax or penalties
If any short payment SCN only for that to be issued	If any short payment SCN only for that notice is to be issued

Payment within 30 days of SCN/SOD

<u>SEC 73(8)</u>	<u>SEC 74(8)</u>
Tax along with applicable interest if paid and No Penalty is payable	Tax along with applicable interest and 25% of tax as penalty if paid
Within 30 days of issue of SCN (to be communicated)	Within 30 days of issue of SCN (to be communicated)
All proceedings is deemed to be concluded	All proceedings is deemed to be concluded

Sec 73(9)&73(10) / Sec 74(9)&74(10) : Order Determining Tax, Int. & Penalty

Order Determining Tax, Int. & Penalty

<u>SEC 73(9) AND 73(10)</u>	<u>SEC 74(9) AND 74(10)</u>
Proper officer will pass order after considering representation	Proper officer will pass order after considering representation
Order determines the amount of tax, interest and penalty	Order determines the amount of tax, interest and penalty
Penalty can be upto 10% of tax due, but cannot be below ₹10,000/-	Penalty can be upto 100% of tax due, but cannot be below ₹10,000/-
Order to be issued within 3 years from the due date for filing of annual return for the year to which the tax relates or, as the case may be, within 3 years from the date of erroneous refund.	Order to be issued within 5 years from the due date for filing of annual return for the year to which the tax relates or, as the case may be, within 5 years from the date of erroneous refund.

Sec 73(11) : Liability To Pay Penalty On Non-payment Of Self-assessed Tax Within 30 Days Of Due Date

Sec 74(11) : Payment Within 30 Days of Order

Sec 73(11) - Liability To Pay Penalty On Non-payment Of Self-assessed Tax Within 30 Days Of Due Date

Notwithstanding anything contained in

- sub-section (6)(No penalty on payment before issuance of SCN) or
- sub-section (8) (No penalty on payment within 30 days of issuance of SCN)

Penalty under

- Sub-section (9) (Penalty can be upto 10% of tax due, but cannot be below 10,000/-) shall be
- payable where any amount of self-assessed tax or any amount collected as tax has not been paid within 30 days of due date of payment of such tax

In simple words, where any self-assessment tax/any amount collected as tax is not paid within 30 days from the due date of payment of tax, then, inter alia, option to pay such tax before or within 30 days of issuance of SCN to avoid penalty, is not available.

Sec 74(11) - Payment Within 30 Days of Order

- Order u/s 74(9) passed by proper officer is served
- Person pays within 30 days of communication
- Tax, Interest & 50% of tax as penalty
- No further penalty is payable
- All proceedings is deemed to be concluded

Leviability of Penalty under Section 73(11) of the CGST Act (Circular No. 76/50/2018-GST dated 31st Dec, 2018)

Q - Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

Ans –

1. As per the provisions of **section 73(11)** of the CGST Act, **penalty is payable** in case 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
2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person 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 for any reason under the provisions of section 73(1) of the CGST Act. **The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.**
3. The provisions of **section 73** of the CGST Act are generally **not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax.** It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases.
4. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a **general penalty under section 125 (i.e. upto ₹ 25,000) of the CGST Act may be imposed** after following the due process of law.

Meaning of “All Proceedings in Respect of the Said Notice”

Explanation 1.—For the purposes of section 73 and section 74,—

(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 section 73 or section 74, the proceedings against all the persons liable to pay penalty under [~~sections 122, 125, 129 and 130~~ sections 122 and 125][**amended vide FA, 2021, w.e.f. 1-1-2022**] 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.

Note –

1. Explanation 1 in Sec 74 has been amended so as to make seizure and confiscation of goods and conveyance in transit under section 129 and 130, a separate proceeding from demand of tax under Sec 73 and 74.

Penalty Summary

Non-Fraud Cases		Fraud Cases	
<u>Paid all dues</u>	<u>Penalty Amount</u>	<u>Paid all dues</u>	<u>Penalty Amount</u>
Before Notice	No penalty*	Before Notice	15% of tax
Within 30 days from notice	No penalty*	Within 30 days from notice	25% of tax
Within 30 days issue of order	10% of tax or 10,000, whichever is higher	Within 30 days from issuance of order	50% of tax
After 30 days issue of order	10% of tax or 10,000, whichever is higher	After 30 days from issue of order	100% of tax
<p>*Benefit of No penalty is not available in case where any amount of self-assessed tax or any amount collected as tax has not been paid within 30 days from due date of payment of tax. In other words, it can be said that benefit of no penalty can be taken only when it is paid within 30 days of due date of payment of such tax</p>			

Monetary Limit prescribed for issuance of SCNs by different level of officers

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and orders under sections 73 and 74 of the CGST Act, upto the prescribed monetary limits of **tax** (including cess) not paid/short paid/erroneously refunded/ITC of CGST wrongly availed/utilised for issuance of SCNs and passing of orders under section 73 and 74 of CGST Act

CGST Officer	Monetary Limit of CGST	Monetary Limit of IGST	Monetary Limit of CGST and IGST
Superintendent of Central Tax	Not exceeding ₹ 10 lakhs	Not exceeding ₹ 20 lakhs	Not exceeding ₹ 20 lakhs
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakhs and not exceeding ₹ 1 crore	Above ₹ 20 lakhs and not exceeding ₹ 2 crore	Above ₹ 20 lakhs and not exceeding ₹ 2 crore
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crore without any limit	Above ₹ 2 crore without any limit

The central tax officers of Audit Commissionerate's and Directorate General of GST Intelligence shall exercise the powers only to issue SCNs. An SCN issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the notice is registered.

In case SCNs have been issued on similar issues to a notice(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such SCNs should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (**Circular No. 31/05/2018 GST dt 09-02-2018**)

Sec 73+74 – Circular issued on demand during fake invoice cases

Circular No. 171/03/2022-GST dated 6-7-2022

Issues	Clarification
<p>In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person ‘A’ in such cases.</p>	<p>Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same.</p> <p>Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction.</p> <p>The registered person ‘A’ shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>

Sec 73+74 – Circular issued on demand during fake invoice cases

Circular No. 171/03/2022-GST dated 6-7-2022

Issues	Clarification
<p>A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies. Whether ‘B’ will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.</p> <p>Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of CGST Act, including under section 122.</p>

Sec 73+74 – Circular issued on demand during fake invoice cases

Circular No. 171/03/2022-GST dated 6-7-2022

Issues	Clarification
<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both.</p> <p>'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both.</p> <p>Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both.</p> <p>As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act.</p> <p>In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>

Sec 75 : General Provisions Relating to Demand

1. Where service of SCN or issue of order is stayed by an order of a Court or Appellate Tribunal, period will be excluded for 3 months/6 months and 3 years/5 years.
2. SCN/SOD u/s 74(1) will be treated as u/s 73(1) – if no fraud, suppression etc, is found by Appellate Authority or Appellate Tribunal or Court : tax only for 3 years.
3. Where any order is required to be issued in pursuance of the direction of the Tribunal or a Court, such order shall be issued within 2 years from the date of communication of the said direction.
4. Opportunity of being heard on request or adverse order.
5. Adjournment on sufficient cause shown : 3 times only.
6. Order to set out the relevant facts and basis of decision – Speaking Order.
7. Amount demanded in order cannot exceed amount specified in SCN/SOD & Only on the grounds in SCN.
8. If tax is modified in Appeal, Interest & Penalty also to be modified accordingly.
9. Interest payable irrespective mentioned in the order.
10. If no order is issued within 3 years/5 years proceedings deemed to be concluded.
11. If order in some other proceedings is in favour of assessee and dept. has filed an appeal, the period between the order passed by AA and that of the AT or AT and HC or HC and SC, is excluded for 3/5 years, where proceedings are initiated by way of issue of a SCN under the sec 73 & 74.
12. Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
13. Where any penalty is imposed under section 73 or 74, no penalty for the same act or omission shall be imposed on the same person under any other provisions of this Act.

Sec 75(12) - Recovery of Interest

- Section 73 & 74 covers interest only if tax is not paid
- Section 75(12) covers a situation where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be directly recovered under the provisions of section 79.
- Sub-section begins with “Notwithstanding anything contained in section 73 or section 74”. Meaning thereby in situations mentioned in Sec 75(12), requirement for issuance of SCN is not there.
- **Explanation.**—For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39. This explanation has been inserted vide **The Finance Act, 2021, w.e.f. 1-1-2022**. (Made effective through NN 39/2021-CT, dated 21st Dec, 2021.)
- Since sub-section (12) of sec 75 already begins with “Notwithstanding anything contained in section 73 or section 74”. Meaning thereby in situations mentioned in Sec 75(12), requirement for issuance of SCN is not there. Insertion of this explanation means that any difference between tax on outward supply reported in GSTR-1 and GSTR-3B, will be recoverable without issuance of any show-cause notice u/s 73 or 74.

Sec 75 : General Provisions Relating to Demand

Rule 142B - Intimation of certain amounts liable to be recovered under section 79 of the Act.

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in **FORM GST DRC-01D**, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be, the amount of interest, within **7 days of the date of the said intimation** and the said amount shall be posted in Part-II of Electronic Liability Register in **FORM GST PMT-01**.

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.

[Rule Inserted vide NN 38/2023-CT, dated 4-8-2023, w.e.f. 4-8-2023.]

Sec 75 : General Provisions Relating to Demand

Circular No. 185/17/2022-GST dated 26-12-2022 issued to clarify the applicability of Sec 75(2) and time limit thereof

Circular clarified –

1. Where the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under section 74(1) of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under section 73(1) of CGST Act, in accordance with the provisions of section 75(2) of CGST Act. time period for re-determination of the tax, interest and penalty payable by the noticee in such cases will be **within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.**
2. In cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under section 73(1) of CGST Act in terms of section 75(2) of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under section 73(2) read with section 73(10) of CGST Act. **Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.**

Rectification of errors apparent on the face of record (Sec 161)

Sec 161 Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any

- decision or
- order or
- notice or
- certificate or any other document,

may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either

- on its own motion or
- where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the SGST Act or an officer appointed under the UTGST Act or
- by the affected person

within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

- Provided** that no such rectification shall be done after a period of 6 months from the date of issue of such decision or order or notice or certificate or any other document:
- Provided** further that the said period of 6 months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:
- Provided** also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Rectification of errors apparent on the face of record (Sec 161)

Note –

1. This Section begins with caution in stating that –

- ✓ No prejudice will be caused to the validity of proceedings listed in Sec 160 from the defects that may be present in the document concerned. In other words, inspite of errors apparent on the face of record discovered at the later stage of proceedings listed in Sec 160, those proceedings will still be valid.
- ✓ But overrides all other provisions of the Act.

Assessment Proceedings, etc not to be Invalid on Certain Grounds (Sec 160)

Sec 160(1) No

- assessment,
- re-assessment,
- adjudication,
- review,
- revision,
- appeal,
- rectification,
- notice,
- summons or
- other proceedings

done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

Sec 160(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Sec 76 : Tax Collected But Not Deposited To Govt.

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force,

- every person who has collected from any other person
- any amount as representing the tax under this Act, and
- has not paid the said amount to the Government,
- shall forthwith pay the said amount to the Government,
- irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid,

- the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to
- why the said amount as specified in the notice, should not be paid by him to the Government and
- why a **penalty equivalent to the amount specified in the notice** should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2),

- determine the amount due from such person and thereupon such person shall pay the amount so determined.

Sec 76 : Tax Collected But Not Deposited To Govt.

- (4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.
- (5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.
- (6) The proper officer shall issue an order within one year from the date of issue of the notice.
- (7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

Sec 76 : Tax Collected But Not Deposited To Govt.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Note –

There appears to be no time limit to commence proceedings under this section.

Amount payable by a taxable person in pursuance of an order passed under the Act

- SHALL BE PAID WITHIN 3 MONTHS OF SERVICE OF SUCH ORDER FAILING WHICH RECOVERY PROCEEDINGS SHALL BE INITIATED.

Where PO considers it expedient in the interest of revenue,

- He may for reasons to be recorded.
- Require taxable person to make such payment within such shorter period as may be specified

Sec 79(1) : Recovery of Tax

- Amount payable to the credit of CG is not paid, can be recovered by the following modes –

Deduction of **money** owing to such person which are under control of proper officer/such other specified officer*

Detaining and Selling any **goods** belonging to such person which are under control of proper officer/any other specified officer

Recovery from any other person who owes money to defaulter (next slide)

Distrain (Seize) and Detain any movable/immovable Property by Proper Officer (next slide)

Recover as land revenue arrears by collector on certificate^ by Proper Officer.

Recover by way of an application to the appropriate Magistrate who inturn shall proceed to recover the amount as if fine imposed by him

*Specified officer shall mean any officer → of the CG or SG or UT or LA or → of a Board or Corporation or a company owned or controlled, wholly or partly, by the CG or SG or UT or LA

^ Such certificate will be sent to the Collector of the District (DC) in which the defaulter → owns any property or → resides or → carries on his business. DC shall recover such dues as arrears of land revenue.

Recovery from any other person who owes money to defaulter [Garnishee Proceedings]

Require any other person to pay when

- Amount has become due to pay the defaulter
- Is likely to become due to defaulter
- Holds money for or on account of defaulter
- May subsequently hold money of defaulter

Proper Officer may issue notice

- To pay to Govt. forthwith (upon becoming due or being held) or
- At or within the time specified in the notice not being before the money becomes due or is held.
- In particular, where notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy before payment is made for the purpose of entry.

Amount directed to be paid in the notice

- Where the amount due / held by such other person is more than amount due by the defaulter – to the extent of amount due by the defaulter;
- Where the amount due / held by such other person is equal to or less than amount due by defaulter – whole money due/held

Notice

- Such other person to whom notice issued is bound to comply with notice
- Notice to a post office, bank or an insurer – Comply without insisting on production of any passbook, deposit receipt, policy or any other document for the purpose of any entry endorsement or the like.

Recovery from any other person who owes money to defaulter [Garnishee Proceedings]

Fails to comply to the Notice

- Fails to comply – Treated as defaulter to the extent of the amount mentioned
- Notice so issued may be amended or revoked or the time may be extended for making any payment
- The payment made by such other person in accordance with the notice issued, shall be deemed to have made the payment on behalf of such defaulter and the amount credited to the government shall be deemed to constitute the discharge of liability of such defaulter to the extent of the payment made. Consequently, no civil suit or other proceedings could be filed or initiated by the defaulter on the notice, who has complied with this provision.
- Instead of crediting the amount to the government, if such person makes the payment to defaulter, then such other person shall be personally liable to the Government to the extent of the amount due by the defaulter or amount discharged to the defaulter whichever is lower.

Such person is not personally liable, if he proves to the officer issuing the notice that

- The money demanded or part thereof was not due to the person in default nor likely to become due
- At the time of service of the notice he did not hold any money for or on account of the person
- Not likely to hold the amount demanded or part thereof for or on account of such person

Distrain (Seize) and Detain any movable/immovable Property by Proper Officer

- the proper officer may, in accordance with the rules to be made in this behalf,
- distrain any movable or immovable property belonging to or under the control of such person, and
- detain the same until the amount payable is paid;

- and in case, 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 any such distress, may cause the said property to be sold and

- with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person

Other Recovery Mechanism

Recovery through execution of a decree, etc [Rule 146]

- Where any amount is payable to the defaulter in execution of a decree of a Civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

Recovery through surety [Rule 157]

- Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this chapter as if he was the defaulter.

Recovery from company in liquidation [Rule 160]

- Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in prescribed form.

Sec 79(2) & 79(3) : Recovery of Tax

Sec 79(2) Under the GST Act, rules or regulations there would be requirement to execute bond or other instrument. Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in section 79(1), the amount may, be recovered in manner as provided under sec 79(1) irrespective of whether other mode of recovery exists or not.

Sec 79(3) - Where any sum (Tax /Interest /Penalty) is payable under CGST Act

- PO of SG or UT recovers its dues under SGST/UTGST Act, then it may recover the amount under CGST Act and pay the same to CG. Similar provision also exists in SGST/UTGST Act for recovery of any amount due under SGST Act/UTGST Act to be recovered by CGST officers while recovering arrears of CGST as though the amount due was CGST and later pass it on to the concerned SG/UT.
- Where amount collected by PO of SG/UT is less than dues of SGST/UTGST+CGST, the amount should be divided between SGST/UTGST and CGST proportionately

Sec 80 : Payment of Amount Due in Instalments

- If tax or any amount is due by taxable person he may **apply** for **monthly instalment facility**.
- The **Commissioner** (CGST) may allow such facility by recording the reasons

Not available for self assessed tax
in return

Not beyond 24 monthly
instalments

Interest also to be paid from the
first day such tax was due till the
date tax is paid

If default in any instalment –
Facility withdrawn and Balance
amount payable forthwith. No
separate notice required

Facility of payment in instalments not allowed in certain cases:

1. The taxable person has already defaulted on the payment of any amount under the CGST Act or IGST Act or UTGST Act or any of the SGST Act, for which the recovery process is on
2. The taxable person has not been allowed to make payment in instalments in the preceding FY under the Act or the IGST Act or UTGST Act or any of the SGST Act;
3. The amount for which instalment facility is sought is less than ₹ 25,000.

Sec 81 : Transfer of Property to be Void in Certain Cases

- Any charge or transfer shall be void as against any claim in respect of any tax or any other sum payable to Govt.

Any tax has become due from a person

Afterwards he creates charge or parts with the property

Which he possesses or belongs to him

By way of sale, mortgage, exchange or any mode of transfer

Transferred in favour of any other person

With an intent to defraud the Govt Revenue

- Exception** : If made for adequate consideration, in good faith & without notice of pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Sec 82 : Tax to be First Charge on Property

- Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- any amount payable by a taxable person or **any other person** on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Note –

1. The provisions of this section would apply to a taxable person or any other person or any other person who is liable to pay tax, interest or penalty to Government.
2. Any liability to be paid to the 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.
3. This provision also covers any other person since there are many provisions in the 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.

Sec 83 : Provisional Attachment to Protect Revenue in Certain Cases

Sec 83 Prior to 1-1-2022

Sec 83. (1) Where during the pendency of any proceedings under

- section 62 (BJA-Non-Filers) or
- section 63 (BJA-Unregistered) or
- section 64 (Summary Assessment) or
- section 67 (Inspection, Search and Seizure) or
- section 73 (Demand-Non Fraud Cases) or
- section 74 (Demand-Fraud Cases),

the **Commissioner** is of the **opinion** that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, 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.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of 1 year from the date of the order made under sub-section (1).

Sec 83 after amendment through FA, 2021, w.e.f. 1-1-22

Sec 83. (1) Where, after the initiation of any proceeding under

- Chapter XII (Chapter on Assessment, containing Self-Assessment, Provisional Assessment, Scrutiny assessment, BJA-Non-Filers, BJA-Unregistered, Summary Assessment)
- Chapter XIV (Chapter on Inspection, Search, Seizure or Arrest, containing sec 67 to 72) or
- Chapter XV (Chapter on Demand and Recovery, containing sec 73 to 84)

the **Commissioner** is of the **opinion** that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the **taxable person OR any person specified in sub-section (1A) of section 122**, in such manner as may be prescribed.]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Sec 83 : Provisional Attachment to Protect Revenue in Certain Cases

Sec 83 after amendment through FA, 2021, w.e.f. 1-1-22

1. The attachment of property including bank account can be after the initiation of any proceeding. Meaning thereby that a proper officer may just issue a SCN under any section of Chapter XII, XIV and XV, and thereafter proceed to attach property, including bank accounts.
2. Bank accounts of not only the taxable person, but those specified under sub-section (1A) of sec 122, i.e. persons who have retained the benefit of the transaction and at whose instance the transaction has been initiated, will be attached.
3. Earlier provision was to check evasion of tax but now coercive measure will be taken even in regular proceedings.

Rule 159. Provisional attachment of property.-

(1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in **FORM GST DRC-22** to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment [*in FORM GST DRC-22*] to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner [**or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier**] to that effect [*and a copy of such order shall also be sent to the person whose property is being attached under section 83*]. [**Words in bold and brackets inserted vide NN 52/2023-CT, w.e.f. 26-10-2023**][**Words in bold, italics and bracket have been inserted vide NN 40/2021-CT, dt 29th Dec, 2021, w.e.f. 1-1-2022.**]

Order For Release of Hazardous or Perishable Property on Payment

(3) Where the property attached is of perishable or hazardous nature, and

- [~~if the taxable person~~ ***if the person, whose property has been attached***] pays an amount equivalent to the market price of such property or
- The amount that is or may become payable [~~by the taxable person~~ ***by such person***], whichever is lower, then such property shall be released forthwith, by an order in **FORM GST DRC-23**, on proof of payment. [**Sub-section has been amended vide NN 40/2021-CT, dt 29th Dec, 2021, w.e.f. 1-1-2022.**]

Sale of Hazardous or Perishable Property by Commissioner

(4) Where ~~the taxable~~ **such** person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by ~~the taxable~~ **such** person. **[Sub-section has been amended vide NN 40/2021-CT, dt 29th Dec, 2021, w.e.f. 1-1-2022.]**

Release of Attached Property on Objection Filed

(5) Any person whose property is attached may, [~~within seven days~~ of the attachment under sub-rule (1), file an objection **in FORM GST DRC-22A**] to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **FORM GST DRC- 23**. **[Sub-section has been amended vide NN 40/2021-CT, dt 29th Dec, 2021, w.e.f. 1-1-2022.]**

Final Release of Property

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

Note –

1. Provisional attachment of property shall not be valid after expiry of 1 year from the date of such order -

This is already stated in Sec 83(2) of the CGST Act, 2017. However, difficulty was being faced by the taxpayer since Rule 159(2) states that such attachment shall be removed only on the written instructions from the Commissioner to that effect. Several taxpayers went to Writ Courts (High Courts) to get their provisionally attached property, primarily bank accounts released.

Now, the government has come to taxpayer's rescue and amended Rule 159(2) w.e.f. 26-10-2023 and provided that attachment of property shall be removed

- only on the written instructions from the Commissioner to that effect or
- on expiry of a period of one year from the date of issuance of order under sub-rule (1),
- whichever is earlier.

Sec 84 : Continuation of Certain Recovery Proceedings

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.

Govt. due - Enhanced

Commissioner shall serve another notice of demand for enhancement

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.

Govt. due – Reduced

No fresh notice – only intimation

Recovery proceeding covered by the notice served before disposal shall be continued from the stage at which such proceeding stood immediately before such disposal