

**Virtual GST Certificate Course
GST & IDTC of ICAI**

Pune Branch of WIRC of ICAI

**Assessment, Demand & Recovery
Under Goods & Services Tax**

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11-06-2021



CHAPTER XII

Assessment



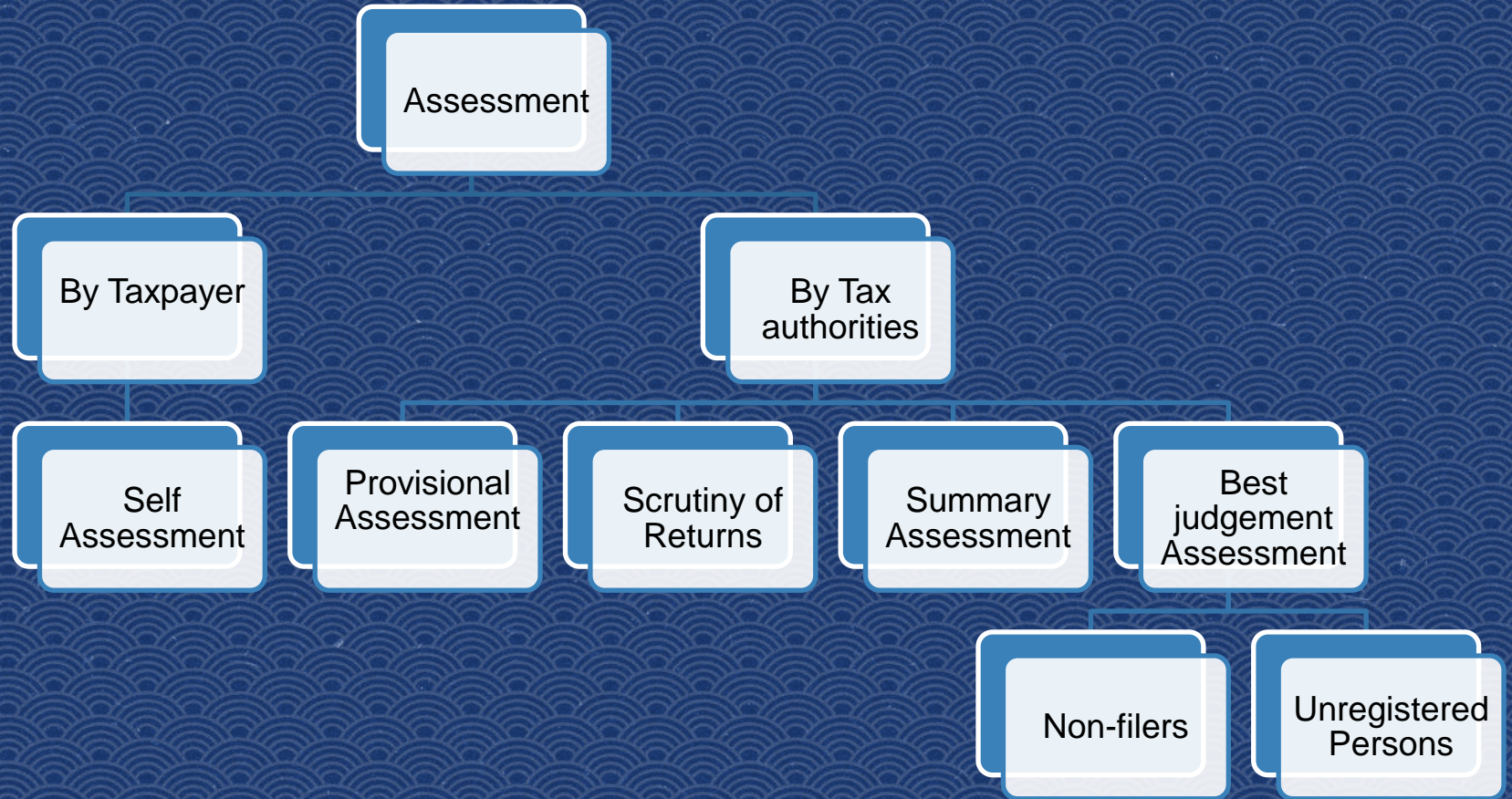
- Definition - 2(11) of CGST Act, 2017
 - Sections – 6 [59 to 64]
 - Rules – 3 [98 to 100]
 - Forms – 18 + 2
- ASMT – 1 to ASMT – 18
- DRC – 01 & DRC – 07



Section 2(11) of CGST Act, 2017 - *“assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;*

Types:

- Self Assessment
- Re-assessment/ Scrutiny assessment
- Provisional Assessment
- Summary Assessment
- Best Judgement Assessment





SELF ASSESSMENT – SECTION 59

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39

- Section 39 - Furnishing of returns.
- GSTR-3B – Regular Return
- GSTR-4 – Composition Dealers
- GSTR-5 – NR Taxable Person
- GSTR-6 – ISD Return
- GSTR-7 – TDS Return



PROVISIONAL ASSESSMENT – Sec 60

- Why & When?
 - where the taxable person is unable to determine
 - The value of goods or services or both
 - The rate at which tax is payable
- How?
 - Write to the Proper Officer giving reasons for payment of tax on provisional basis
- Time Line?
 - Proper officer shall pass an order within 90 days allowing payment of tax on provisional basis indicating the value and rate of tax



PROVISIONAL ASSESSMENT – Sec 69

- Surety?

The taxable person executes a bond with surety or security to pay the differential between finally assessed tax and provisionally assessed tax.

- Final assessment ?

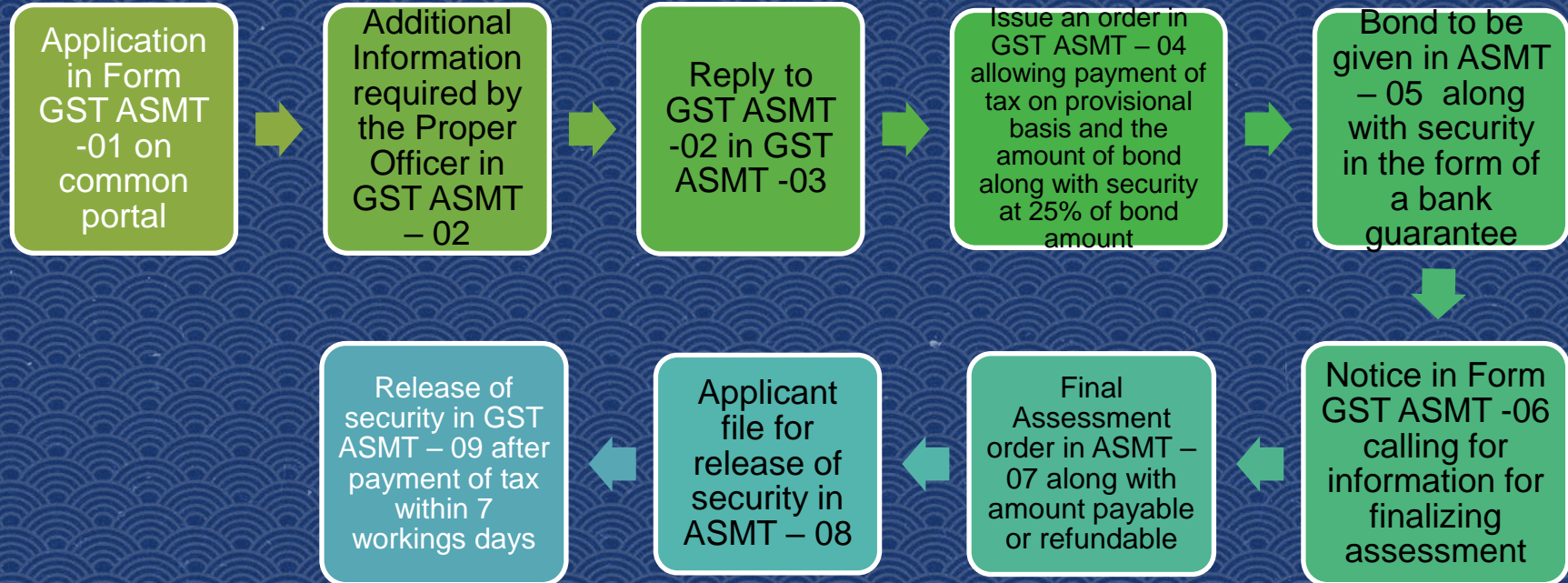
- within 6 months from date of provisional assessment order.
- Can be extended for a further period of 6 months by JC/AC
- Can be extended for such further period not exceeding 4 years by Commissioner.

- Interest?

Tax to be paid along with interest at 18% and refund, if any can also be taken with interest.

PROVISIONAL ASSESSMENT - Procedure

9



9



PROVISIONAL ASSESSMENT - Forms

Forms	Particulars	Rule
GST ASMT-01	Application for Provisional Assessment under section 60	Rule 98(1)
GST ASMT-02	Notice for Seeking Additional Information / Clarification / Documents for provisional assessment	Rule 98(2)
GST ASMT-03	Reply to the notice seeking additional information	Rule 98(2)
GST ASMT-04	Order of Provisional Assessment	Rule 98(3)
GST ASMT-05	Furnishing of Security	Rule 98(3)
GST ASMT-06	Notice for seeking additional information / clarification / documents for final assessment	Rule 98(3)
GST ASMT-07	Final Assessment Order	Rule 98(3)
GST ASMT-08	Application for Withdrawal of Security	Rule 98(3)
GST ASMT-09	Order for release of security or rejecting the application	Rule 98(3)

Form GST ASMT – 04

[See rule 98(3)]

Reference No.:

Date

To

GSTIN -

Name -

Address -

Application Reference No. (ARN)

Dated

Order of Provisional Assessment

This has reference to your application mentioned above and reply dated-----, furnishing information/documents in support of your request for provisional assessment. Upon examination of your application and the reply, the provisional assessment is allowed as under:

<< text >>

The provisional assessment is allowed subject to furnishing of security amounting to Rs.----- (in words) in the form of ----- (mode) and bond in the prescribed format by --- (date).

Please note that if the bond and security are not furnished within the stipulated date, the provisional assessment order will be treated as null and void as if no such order has been issued.

Signature

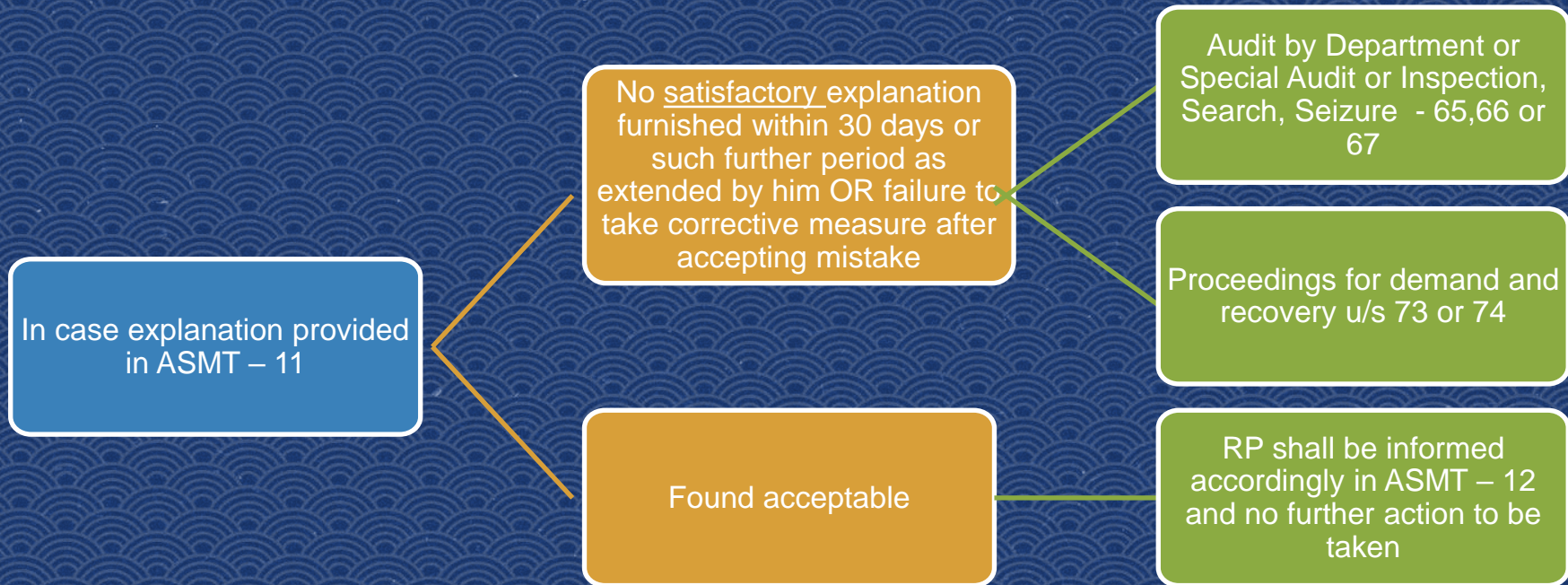
Name

Designation



SCRUTINY OF RETURNS SECTION 61 r/w rule 99

- Proper Officer will scrutinize **the return and related particulars** furnished by the registered person to verify the **correctness of the return** and inform him of the discrepancies noticed in ASMT -10 , if any.



Form GST ASMT - 10

[See rule 99(1)]

Reference No.:

Date:

To _____

GSTIN:

Name :

Address :

Tax period -

F.Y. -

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

<< text >>

You are hereby directed to explain the reasons for the aforesaid discrepancies by -----
- (date). If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Signature

Name

Designation

Form GST ASMT-12

[See rule 99(3)]

Reference No.:

Date:

To

GSTIN
Name
Address

Tax period -
ARN -

F.Y. -
Date -

Order of acceptance of reply against the notice issued under section 61

This has reference to your reply dated ----- in response to the notice issued vide reference no. ----- dated --- . Your reply has been found to be satisfactory and no further action is required to be taken in the matter.

Signature
Name
Designation



ASSESSMENT OF non-filers of returns SECTION 62 r/w rule 100

Circular No. 129/48/2019 dated
24.12.2019

System
generated
reminder 3
days before
due date

Mail sent
to all
defaulters
immediatel
y after due
date

FORM
GSTR-3A
issued
within 5
days of
due date

Best
Judgement
assessment
if no return
filed within 15
days of
GSTR-3A



ASSESSMENT OF non-filers of returns SECTION 62 r/w rule 100

- ❖ Notwithstanding anything to the contrary contained in section 73 or section 74,
 - ❖ where a registered person fails to furnish the return under section 39 or section 45,
 - ❖ even after the service of a notice under section 46,
 - ❖ the proper officer may proceed to assess the tax liability of the said person
 - ❖ to the best of his judgment taking into account all the relevant material which is available or which he has gathered and
 - ❖ issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.



ASSESSMENT OF non-filers of returns SECTION 62 r/w rule 100

- ❖ Where the registered person furnishes a valid return
- ❖ within thirty days of the service of the assessment order under sub-section (1),
- ❖ the said assessment order shall be deemed to have been withdrawn but
- ❖ the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.
- ❖ Penalty Applicable?
 - ❖ Section & Rules are Silent.
 - ❖ What the Form has to say about Section 122 ?
 - ❖ Non payment / Short Payment for more than 3 months?
 - ❖ Short Deducted or Collected / Deducted or collected but not paid

FORM GST ASMT- 13*[See rule 100(1)]*

Reference No.:

Date:

To

_____ (GSTIN/ID)

_____ Name

_____ (Address)

Tax Period :

F.Y. :

Return Type :

Notice Reference No.:

Date :

Act/ Rules Provisions:**Assessment order under section 62****(Assessment order under Section 62)**

Preamble - << standard >>

The notice referred to above was issued to you under section 46 of the Act for failure to furnish the return for the said tax period. From the records available with the department, it has been noticed that you have not furnished the said return till date.

Therefore, on the basis of information available with the department, the amount assessed and payable by you is as under:

Introduction :

Submissions, if any :

Discussions and Findings :

Conclusion :

Amount assessed and payable (Details at Annexure):

Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From	To							
1	2	3	4	5	6	7	8	9	10	11	12
Total											



ASSESSMENT OF UNREGISTERED PERSONS – Section 63 r/w Rule 100

- Where
 - A **taxable person fails to obtain registration** even though liable to do so OR
 - Whose registration has been cancelled u/s 29(2) but liable to pay tax
- Opportunity of being heard to be given - The proper officer shall issue a notice in GST ASMT – 14 and summary thereof in DRC-01 and allow ¹⁹ 15 days time
- The proper officer may proceed to assess the tax liability to the best of his judgement for the relevant periods and issue an assessment order in GST ASMT – 15 and summary order in DRC-07 within a period of five years from the date specified under Section 44 for furnishing of annual return for the FY to which tax not paid relates

Form GST ASMT - 14
[See rule 100(2)]

Reference No:

Date:

To _____
Name
Address

Tax Period --

F.Y. -----

Show Cause Notice for assessment under section 63

It has come to my notice that you/your company/firm, though liable to be registered under section ----- of the Act, have/has failed to obtain registration and failed to discharge the tax and other liabilities under the said Act as per the details given below:

Brief Facts –
Grounds –
Conclusion -

OR

It has come to my notice that your registration has been cancelled under sub-section (2) of section 29 with effect from ----- and that you are liable to pay tax for the above mentioned period.

Therefore, you are hereby directed to show cause as to why a tax liability along with interest not be created against you for conducting business without registration despite being liable for registration and why penalty should not be imposed for violation of the provisions of the Act or the rules made thereunder.

In this connection, you are directed to appear before the undersigned on ----- (date) at ----- (time)

Signature
Name
Designation



SUMMARY ASSESSMENT

SECTION 64 and RULE 100

- Pre – requisites –
 - **Evidence** showing tax liability of a person
 - Previous permission of AC/ JC
 - Sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue
- Issue an assessment order in GST ASMT – 16 and a summary thereof in DRC-07
- Within 30 days of issue of order, the taxable person [GST ASMT -17] may make an application for withdrawal of the above order,
- the AC/JC feels that such order is erroneous pass an order of withdrawal in GST ASMT -18. If they feel the order is correct, they can reject the application with the same form ASMT-18.
- Then follow procedure as per Section 73 or 74



PROPER OFFICER

Section 2(91) - "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017

Designation	Functions
Deputy or Assistant Commissioner of Central Tax	Sub-sections (1), (2) and (3) of Section 60 – Provisional Assessment
Superintendent of Central Tax	Sub-sections (1) and (3) of Section 61 – Scrutiny of Returns Sub-sections (1) of Section 62 – Best Judgment
Deputy or Assistant Commissioner of Central Tax	Section 63 – Assessment of Non-filers of returns Sub-section (1) of Section 64 – Summary Assessment

Demand & Recovery

CONTENTS

CHAPTER XV OF CGST Act, 2017

DEMANDS

DEMAND :

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 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

DEMAND :

SECTION 75 : General provisions relating to determination of tax .

SECTION 76 : Tax Collected but not paid to Government

SECTION 77: Tax wrongfully collected and paid to Central Government or State Government.

CONTENTS

CHAPTER XV OF CGST Act, 2017

RECOVERY

RECOVERY :

SECTION 78: Initiation of recovery proceedings.

SECTION 79: Recovery of tax

SECTION 80: Payment of tax and other amount in instalments



**SHOW
CAUSE
NOTICE**

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]

**SHOW CAUSE
NOTICE**

Circumstances under which SCN is issued?

S.No	SCN For	Form
1	Denial of Option to Pay Tax u/s. 10	GST-CMP-05
2	For Cancellation of Regular Registration	GST-REG-17
3	For Rejection of application for revocation of Cancellation of Registration	GST-REG-23
4	For Cancellation of Provisional Registration	GST-REG-27
5	For Disqualification of GST Practitioner	GST-PCT-03

SHOW CAUSE NOTICE

Circumstances under which SCN is issued?

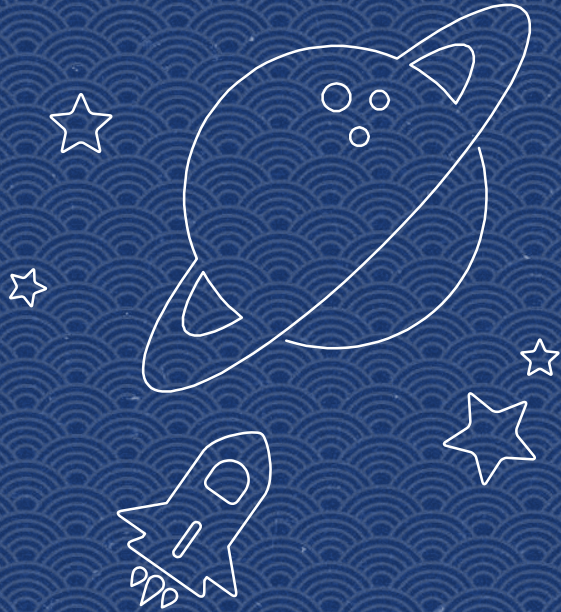
S.No	SCN For	Form
6	Rejection of Refund Claim	GST-REF-08
7	Assessment under Section 63	GST-ASMT-14

Which Show Cause Notice which we are going to look into?

SHOW CAUSE NOTICE – Under Section 73 & 74

“

The show cause notice is the foundation on which the department has to build up its case.



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.

EXAMPLE WITH DATES

Financial Year 2017-18

**Date of
Passing Order**

**Date of
Issuance of
SCN**

Due Date for
filing of
Annual
Return:
**07th February
2020.**

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

i.e.

**06th February
2023**

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

i.e. upto

**05th November
2022.**

**Date
Chart for
Serving
of SCN
&
Passing
of Order
for
73(2)**

Year	Due Date for Filing of Annual Return	SCN Can be issued upto (2Yrs & 9M Approx from DD of AR..)	Order to be passed within (3Yrs from DD of AR)
2017-18	07-Feb-2020	05-Nov-22	06-Feb-23
2018-19	31-Dec-2020	29-Sep-23	30-Dec-23
2019-20	31-Mar-2021	29-Dec-23	30-Mar-24

Section 73(3)

Statement in Lieu of A Full Fledged SCN.

Note: 1st Year SCN has to be issued.

Section 73(4)→

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”

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.

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!!!



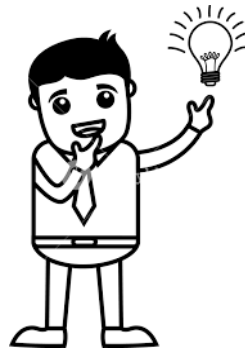
Section

**73(5)*
&
73(6)***

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.

**Section
73(7)***

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



**Section
73(8)***

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

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:

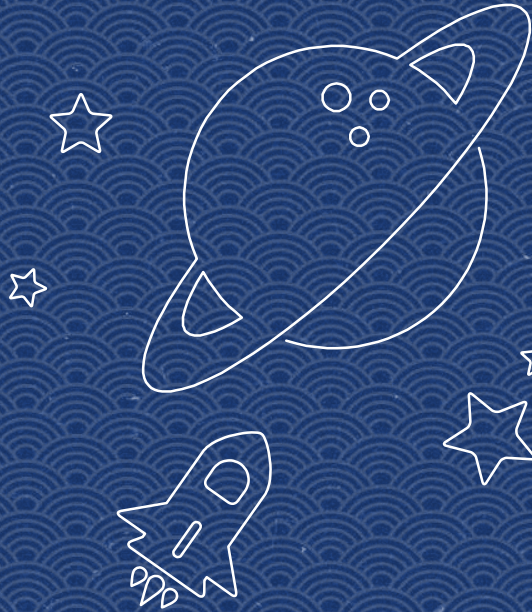
The officer shall issue an order demanding tax, interest and *penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher.*

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 credit⁴³ 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.

EXAMPLE WITH DATES

Financial Year 2017-18

Date of
Passing Order

Date of
Issuance of
SCN

Due Date for
filing of
Annual
Return:
**07th February
2020.**

within FIVE years
from the due date for
furnishing of annual
return for the financial
year to which the tax
relates to
i.e.
**06th February
2025**

at least SIX months
prior to the time limit
specified in sub-
section (10) for
issuance of order”
i.e. upto
**07th August
2024.**

**Date
Chart for
Serving
of SCN
&
Passing
of Order
for
74(2)**

Year	Due Date for Filing of Annual Return	SCN Can be issued upto (4Yrs & 6M Approx from DD of AR..)	Order to be passed within (5Yrs from DD of AR)
2017-18	07-Feb-20	05-Aug-24	06-Feb-25
2018-19	31-Dec-20	29-Jun-25	30-Dec-25
2019-20	31-Mar-21	29-Sep-25	30-Mar-26

Section 74(3)

Statement in Lieu of A Full Fledged SCN.

Note: 1st 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 1st 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.

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%**

Section

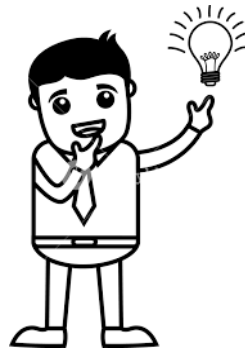
**74(5)
&
74(6)**



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???....)

**Section
74(7)**



TAX PAYER: (After Issuance of SCN / Statement)

Officer Officer,

Section 74(8) Kindly accept this letter.... I have paid the **BALANCE** taxes and interest **ALONG WITH 25% Penalty** as demanded in the 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%

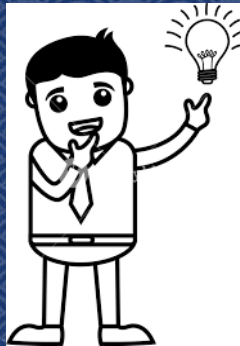


Issuance of Order – 74(9)

- 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.

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- What's NEXT????



Conclusion of Proceedings – Sec 74(11)

TAX PAYER: (After Passing of Order)

Officer Officer,

Kindly accept this letter.... I have paid the taxes and interest

ALONG WITH 50% Penalty as Confirmed in the Order [**WITHIN 30**

DAYS OF ISSUANCE OR ORDER]. I am submitting the necessary
challan copies too... Kindly close the case..

54

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

TAX PAYER: Thank God. Missed 15%, Missed 25%, Escaped with 50%. Had I not opted, penalty would have been 100%....

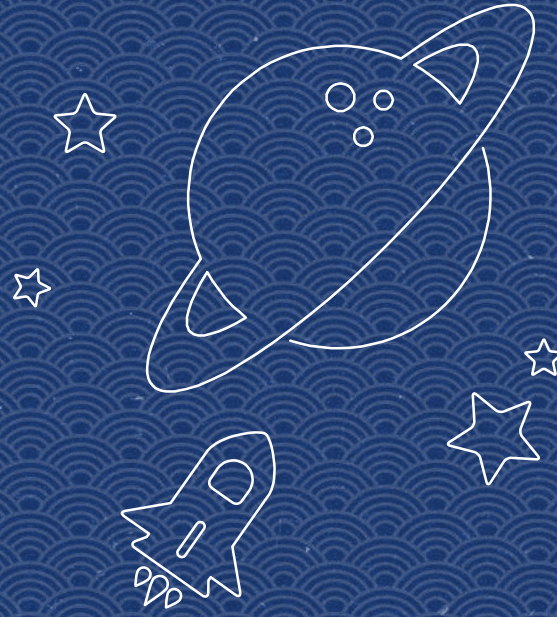
Certain Explanations to 73 & 74

- **Explanation 1.**— For the purposes of section 73 and this section,—
- (i) - "all proceedings in respect of the said notice" - shall not include proceedings under section 132; (Punishment – Imprisonment, fine... etc)
- (ii) – If Proceedings initiated on Main person gets concluded, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

[Specific Penalty, General Penalty, Detention, Confiscation]

55

- **Explanation 2.**— For the purposes of this Act, the expression "**suppression**" shall mean
- A) 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
- B) failure to furnish any information on being asked for, in writing, by the proper officer



SECTION 75

General Provisions relating to Determination of Tax

SECTION 75(1) - Exclusion of STAY PERIOD

- If service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal,
- the period of such stay shall be excluded in computing the period specified in
- 73(2), 73(10) & 74(2), 74(10)

"Affirmati Non Neganti
Incumbit Probatio",

“

that is,

"the burden of proof is
upon him who affirms - not
on him who denies".

SECTION 75(2) – 74(1) auto converts to 73(1)

- any Appellate Authority or Appellate Tribunal or court
- Concludes that notice under section 74(1) is not sustainable
- for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established
- Proper officer shall determine the liability as if notice was issued under Section 73(1)

SECTION 75(3) – Time to Pass Order on Remanded Matter

- any order is required to be issued
- in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court,
- such order shall be issued within
- two years from the date of communication of the said direction.

Supreme
Court on
Natural
Justice

"principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights.

SECTION 75(4) – Personal Hearing

- A 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**

**OTHER
PROVISIONS
UNDER
SECTION 75**

Section 75(8)

If appellate fora modifies the demand amount, the modified demand only will be enforceable.

Section 75(9)

The interest on the tax liability / demand shall be payable **whether or not specified in the order** confirming the tax liability.

Section 75(10)

If orders not passed within 3/5 years as the case may be, adjudication proceedings are deemed to be concluded.

**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.

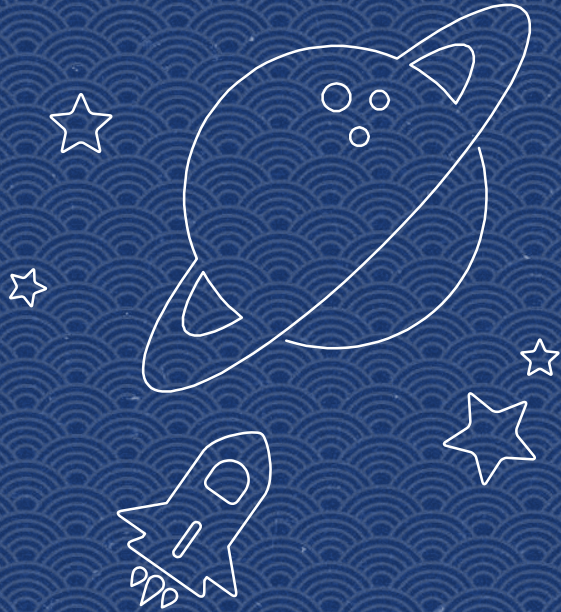
Section 75(12) – Straight Recovery???

- 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.

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Ref: LC Infra Projects P Ltd Case [TS-776-HC-2019(KAR)-NT] + Jharkhand HC

Section 75(13) – Once penalty imposed under 73/74 no other penalty under this act shall be applicable for the same act.



SECTION 76

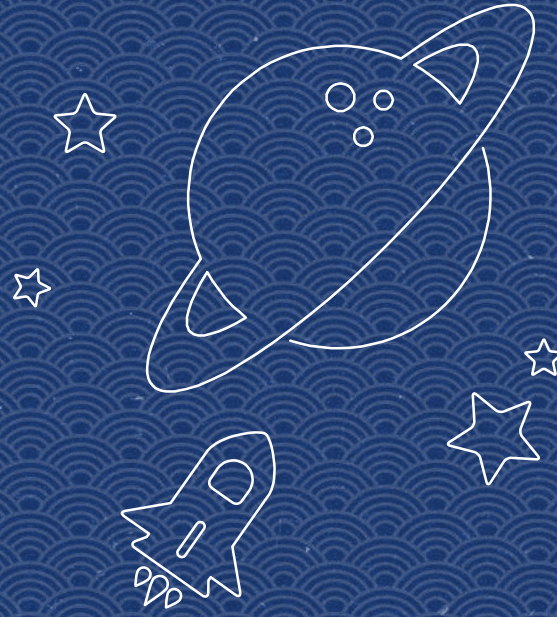
**Tax collected but not
paid to Government.**

- 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

SECTION 76
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- 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

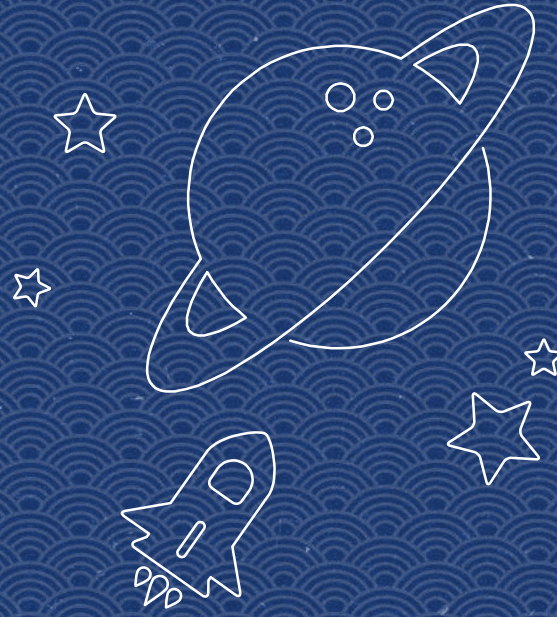
**Tax wrongfully collected
and paid to Central
Government or State
Government.**

SECTION 77(1) – Wrong Head of Payment

- Nature of Supply was - Interstate
- Wrongly Understood as = Intra State
- Paid Wrongly = CGST + SGST/UTGST
- Liability was = IGST
- Resolution??
- Refund Application to be filed for claiming C/SGST .
- [Rule 89 of CGST Rules - *(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;*] {Ref Sec. 19 of IGST Act – No Interest}

SECTION 77(2) – Wrong Head of Payment

- Nature of Supply was - Intrastate
- Wrongly Understood as = Inter State
- Paid Wrongly = IGST
- Liability was = CGST + SGST/UTGST
- Resolution??
- Refund Application to be filed
- [Rule 89 of CGST Rules - *(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;*] {Ref Sec. 19 of IGST Act – No Interest}

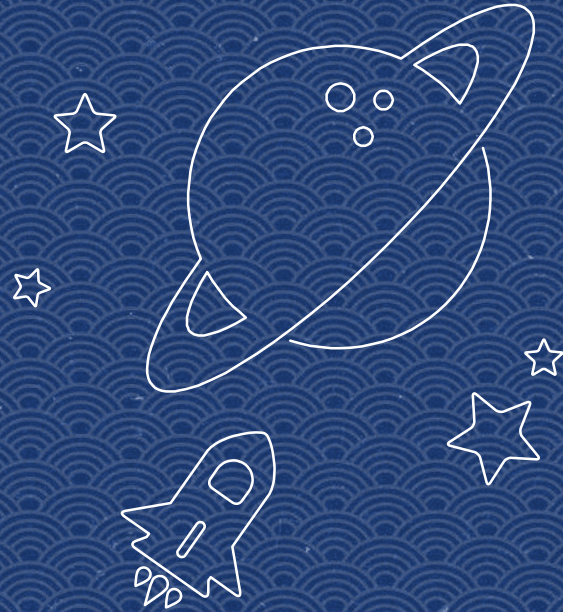


SECTION 78

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. 78
- 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.



Thank you!

- ◉ Thank You
- ◉ GST & IDTC Committee of ICAI
- ◉ Pune Branch of WIRC of ICAI
 - ◉ Technical Support Staff
- ◉ All Esteemed Participants

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Please share your views about this session on

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