

**Webinar by
GST & IDTC of ICAI**

**Demands & Recovery Under
Goods & Services Tax**

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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

RECOVERY :

SECTION 78: Initiation of recovery proceedings.

SECTION 79: Recovery of tax

SECTION 80: Payment of tax and other amount in instalments

CHAPTER XV OF CGST Act, 2017

RECOVERY



**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?

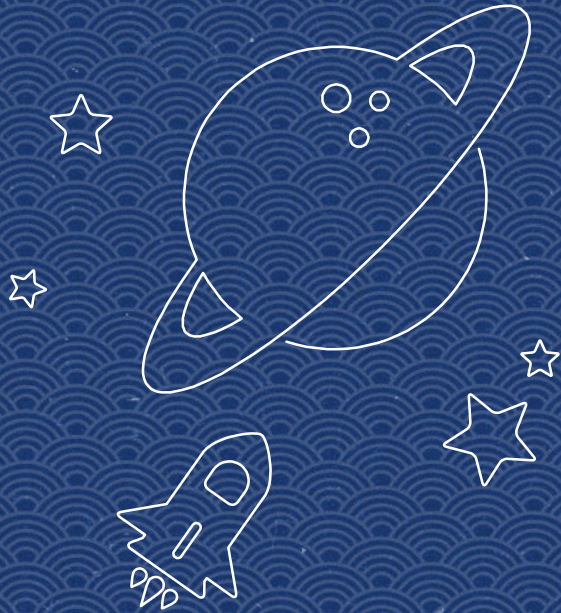
S.No	SCN For	Form
6	Rejection of Refund Claim	GST-REF-08
7	Assessment under Section 63	GST-ASMT-14

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

**06th November
2022.**

31st Dec 2018

30th Dec 2021

29th Sept 2021

**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 (TN)	06-Nov-22	06-Feb-23
2018-19	30-Jun-2020	29-Mar-23	29-Jun-23
2019-20	31-Dec-2021	29-Sept-24	30-Dec-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!!!



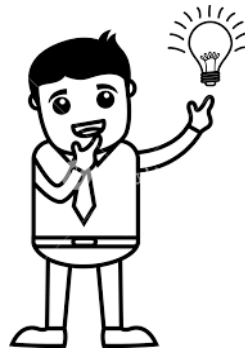
Section

**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 credit₂₁ 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
**05th August
2024.**

31st Dec 2018

30th Dec 2023

29th June 2023

**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 (TN)	05-Aug-24	06-Feb-25
2018-19	30-Jun-20	28-Dec-24	29-Jun-25
2019-20	31-Dec-21	29-Jun-26	30-Dec-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

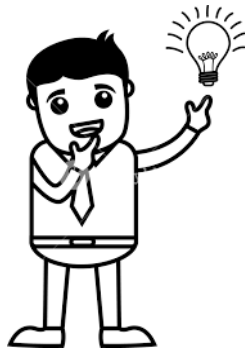
**74(5)*
&
74(6)***



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.

**Section
73(7)***

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



TAX PAYER: (After Issuance of SCN / Statement)

Officer Officer,

Section 73(8)* Kindly accept this letter.... I have paid the **BALANCE** taxes and interest **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%

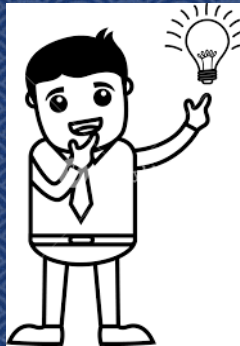


Issuance of Order – 74(9)

- 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.

31

- 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..

32

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%....

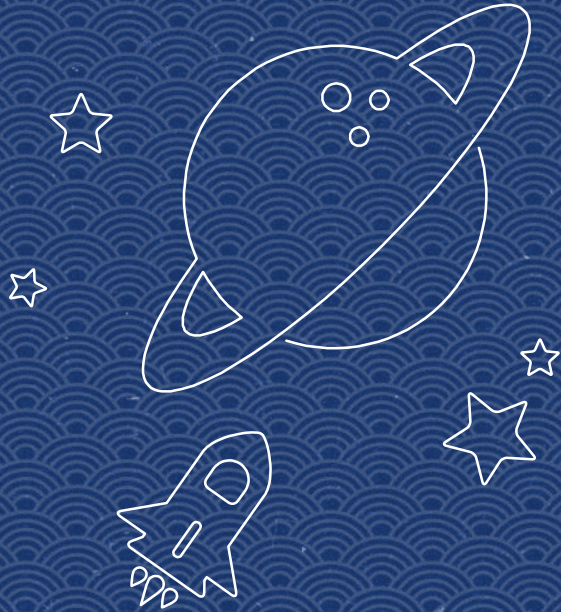
Certain Explanations to 73 & 74

- **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]

33

- **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,

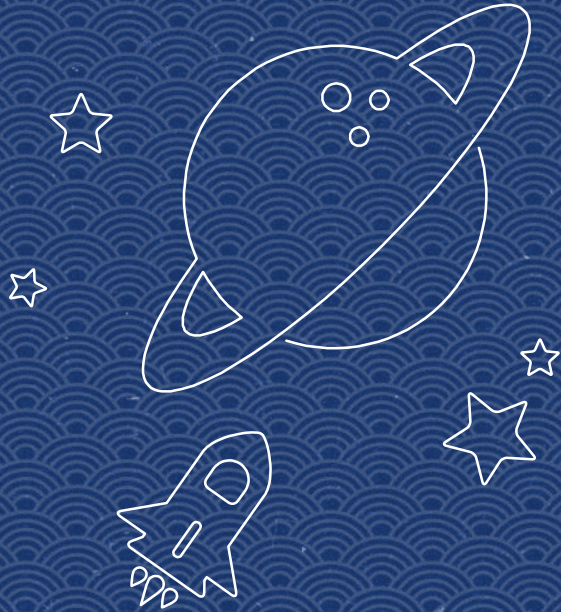
The time period between the order from the Col. (1) & Col. (3) shall be excluded from the time period of 3 Years / 5 Years as the case may be.

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.

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

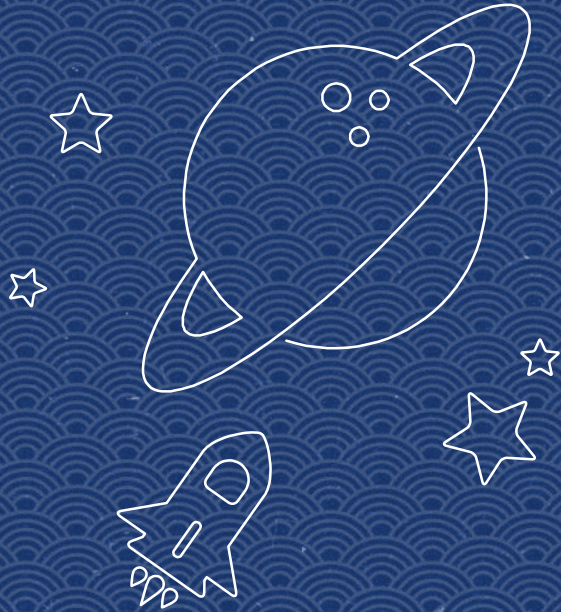
**Tax collected but not
paid to Government.**

- 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
47

- 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

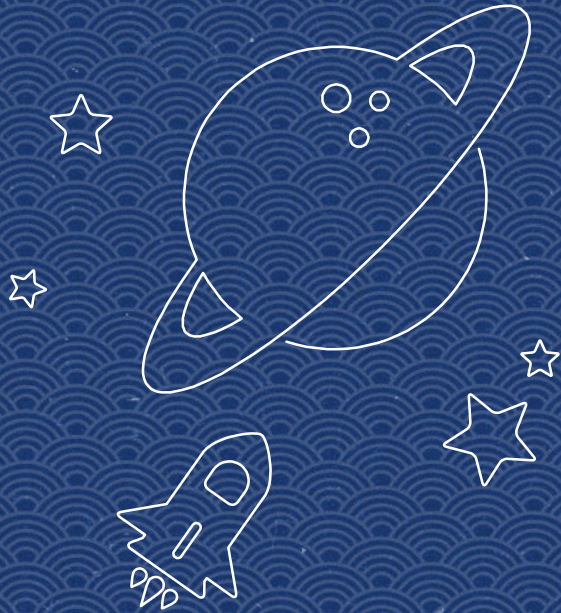
**Tax wrongfully collected
and paid to Central
Government or State
Government.**

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}

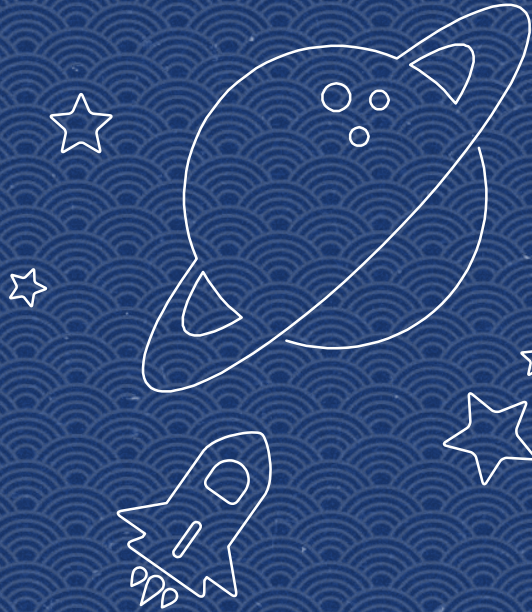


SECTION 78

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.
- 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.

Some FAQs.... & Practical Aspects

- What is show cause notice?
- Is there any format for issuing show cause notice by department?
- Whether Show Cause notice will be issued for the liabilities identified and paid during the audit?
- What is normal time limit?
- What is extended time limit?

- 7. What is the provision in law which gives powers to the officers to issue Show Cause Notice?
- 8. What is the difference between Section 73 and Section 74
- 9. What are the modes in law to serve a show cause notice to an assessee? [Ref [Section 169](#)]
- 10. What an assessee should do on receipt of a show cause notice?
- 11. What should a professional do on receipt of information from his/her client that some “letter” / “notice” has come from department?
- 12. What is power of attorney

- 13. How a show cause notice has to be read?
- 14. What is the time limit within which a reply has to be filed in response to the show cause notice?
- 15. What are the references that should be collated together for responding to a show cause notice?
- 16. What are all the information that a professional should ask and collect from his/her client?
- 17. What is that approach a professional is required to follow in handling a show cause notice?
- 18. How a reply should be structured

- 19. What should find a place in a reply to show cause notice?
- 20. How to handle the issue of calculation dispute?
- 21. How to handle the issue of Input tax credit dispute?
- 22. How to handle the issue of classification?
- 23. What is question of law? How do you address that?
- 24. What is question of fact? How do you address that?

- ◎ 25. Can you bank upon some Judicial Pronouncements?
- ◎ 26. How can you refer to the judicial pronouncements in your response?
- ◎ 27. What if the assessee had really committed the mistakes? Will you be able to defend?
- ◎ 28. Who is authorised signatory?
- ◎ 29. What is the manner prescribed for signing the document before submission?
- ◎ 30. Whether the reply needs to be filed online?

- 31. Is it necessary that you need to prepare the papers for submissions? If yes, how?
- 32. What is the importance and usage of preparing a gist of the case?
- 33. What is personal hearing?
- 34. When and how will you receive a personal hearing notice?
- 35. What needs to be done on receipt of a personal hearing notice?
- 36. What is adjournment? How many times it can be claimed? In what manner?

- 37. Who is the officer before whom the case will come up for hearing?
- 38. How to represent your case before an officer?
- 39. What is record of personal hearing?
- 40. What is an adjudication order? How it will reach the assessee?
- 41. What is next if you have won the matter?
- 42. What is next if you have lost the matter?



THANKS!

**To GST & IDTC Committee
To All Participants
To Entire Technical Team
For Making this Webinar Happen.**

67