CHAPTER 19

DEMANDS AND RECOVERY



The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2026.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand the provisions relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised whether by reason of fraud or wilful-misstatement or suppression of facts, or otherwise.
- explain the consequences in case where tax is collected but not paid to Government.
- describe the provisions of tax wrongfully collected and paid to the Government.
- explain the recovery proceedings.
- elaborate the facility of payment of tax and other amount in instalments.
- identify the cases where the transfer of property is void.
- explain provisions relating to provisional attachment to protect revenue.

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1. INTRODUCTION

Though it is the duty of every taxable person to self-assess and pay his GST liabilities voluntarily, tax administration occasionally comes across situations where the tax dues are not paid correctly by the taxpayers. While in most of these cases, such non-payment is due to the bonafide belief of the person that his activities do not attract any tax liability under the GST law; or he is entitled to certain exemption, etc., in some cases, such non-payment is deliberate with an intention to evade payment of such tax by way of short payment of tax, excess availment of input tax credit, etc.

As per the relevant provisions, the self-assessed tax has to be paid by the due date prescribed under the GST law and any non-compliance may affect the Input Tax Credit (ITC) eligibility of the customers and also the tax payer will not be able to file any return for further period in certain circumstances. Effectually, these provisions work as a self-policing system and take care of any mismatch in the payment of taxes.

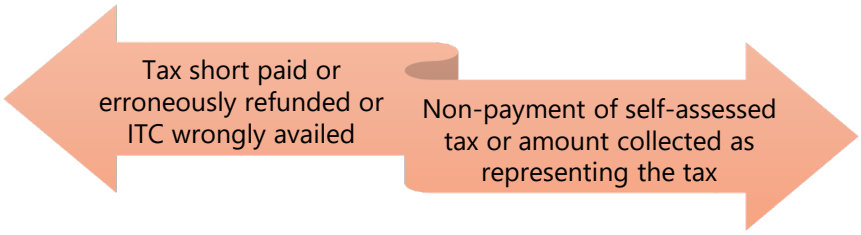


However, despite these provisions, there may arise some instances where the tax was not paid correctly. To deal with such situations, Revenue must be empowered to demand the tax liability and recover such tax from the defaulter.

On one hand, there is a dire need to have a robust demand and recovery mechanism in place in order to empower the Revenue to exercise said powers, at the same time, care must also be taken that there should not be arbitrary exercise of such powers by the Revenue and same should be appropriately regulated.

Accordingly, the GST law contains elaborate provisions for the recovery of tax under various situations, which can be broadly classified into following two categories:

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Chapter XV of the CGST Act 2017 [Sections 73 to 84[1]] and Chapter XVIII [Rules 142 to 161] of the CGST Rules, 2017 contains various provisions relating to demands and recovery. There are parallel provisions in SGST laws of various States. The demand and recovery proceedings will be made either by Central GST Officer or State GST Officer depending on their jurisdiction over particular taxable person.

Provisions of demands and recovery under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the demands and recovery provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- **Appellate Tribunal:** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].

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[1] Since sections 73 and 74 contain the provisions for determination of tax, pertaining to the period upto Financial Year 2023-24, 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 or by reason of fraud or wilful-misstatement or suppression of facts, said provisions have not been discussed in detail in this Chapter and are not relevant for examination purpose. However, brief references to said sections have been retained wherever they are referred to in other sections/rules and in CBIC clarifications.
Section 74A containing provisions relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward has been discussed in detail and will be relevant for examination purposes.

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- **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- **Market value:** shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)].
- **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 [Section 2(91)].

3. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILISED FOR ANY REASON PERTAINING TO FINANCIAL YEAR 2024-25 ONWARD [SECTION 74A READ WITH RULE 142]



- Section 74A stipulates the manner in which the tax liability of a person should be determined in case of short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utilization of ITC. It provides a unified mechanism for both fraud and non-fraud cases, i.e. where such short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utilization of ITC is by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax or by reasons other than fraud or wilful-misstatement or suppression of facts.
- **Limitation period:** One of the core principles of law is that legal proceedings must have an element of certainty. The law of limitation is built on this principle, as any action under any law must be taken within a prescribed time frame; otherwise, disputes would remain open-ended and uncertain. The purpose of a limitation period under tax law is to fix a definite time within

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which the tax authorities can take action, such as raising a demand, issuing a notice or making an assessment.

It ensures that tax matters are not kept open indefinitely, giving certainty and finality both to the taxpayer and the Department. The provisions of limitation period gain all the more importance in the legislation dealing with indirect taxes, where the tax burden is to be passed on to the next level at every stage. Therefore, a tax law must have a limitation period, beyond which demands cannot be raised.

- **Principal of natural justice:** In order to adhere to the principles of natural justice, before raising any tax demand, a notice has to be issued [generally referred to as Show Cause Notice(SCN)], asking the person chargeable with tax to show cause as to why the specified amount of tax, interest and penalty should not be demanded from him.

  The issuance of SCN grants an opportunity to such person to defend himself before adjudication. The person to whom such notice has been issued can contest the demand by filing a reply to the SCN and also by appearing before the adjudicating authority personally. After considering the reply filed by the person as well as the submissions made during the personal hearing, the adjudicating authority shall pass a speaking order, either confirming the tax demand or dropping the same.

- Section 74A provides standardized timelines and procedures for both types of cases, thereby bringing efficiency in handling the cases and promoting better understanding in following manner:

  - Show cause notice (hereinafter referred as SCN) can be issued within 42 months (3.5 years), from the due date of furnishing the annual return or from the date of erroneous refund.
  - The order must be passed within 1 year, from the date of SCN.

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The incidence of short payment/non-payment of tax or erroneous refund or wrong availment/utilisation of ITC may be because of an inadvertent bonafide mistake, i.e. by reasons other than fraud or wilful-misstatement or suppression of facts (hereafter referred as **Non-fraud cases**) or it may be a deliberate attempt to evade the tax, i.e. by reason of fraud, or any wilful-misstatement or suppression of facts (hereinafter referred as **Fraud cases**).

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The provisions contained in section 74A have been discussed in detail below.

A. Issuance of SCN [Section 74A(1), (3)and (4)]



- SCN is issued in any of the following cases:
  - Tax has not been paid,
  - Tax has been short paid,
  - Tax has been erroneously refunded, or
  - ITC has been wrongly availed/utilised.
- SCN requires the person chargeable with tax to show cause as to why he should not pay the amount specified in SCN along with interest payable thereon under section 50 (interest on delayed payment of tax)[2] and a penalty leviable under the provisions of the GST law. Thus, SCN would clearly state the amount of tax, interest and penalty that the person is liable to pay.
- Needless to say, the notice should clearly state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.
- SCN is to be issued in both fraud cases and non-fraud cases.
- **Exception:** No SCN shall be issued if the disputed amount[3] is less than ₹ 1,000 in a financial year.
- **Pre-SCN intimation:** The proper officer may, before serving of such SCN, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty. It is important to note that issuance of pre-SCN intimation is not mandatory.

  Where such person 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 and thereafter the

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[2] Notification No. 13/2017 CT dated 28.06.2017 has notified the rate of interest as 18% per annum under section 50.

[3] Disputed amount here refers the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised

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proper officer may issue an intimation, accepting the payment or the submissions or both, as the case may be, made by the said person.

- **Statement in lieu of SCN for subsequent periods:** Where a SCN has been issued for any period, the proper officer may serve a statement instead of SCN for the subsequent periods.

  Such statement shall contain the details of:

  - Tax not paid
  - Tax short paid
  - Tax erroneously refunded, or
  - ITC wrongly availed/utilised.

  Statement shall be served for the periods other than those covered under the SCN earlier issued.

  The service of such statement for subsequent periods shall be deemed to be service of SCN on the person chargeable with tax. This is subject to the condition that the grounds relied upon for subsequent tax periods are the same as are mentioned in the earlier SCN.

  This provision ensures that the Department's time is saved by avoiding repetitive re-typing of demand notices.

B. Time limit for issuance of SCN [Section 74A(2)]

SCN must be issued within **42 months (3.5 years)** from:



- the due date for furnishing of annual return[4] or
- the date of erroneous refund.

[4] *Annual return here refers to annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to.*

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C. Quantum of penalty [Section 74A(5)]

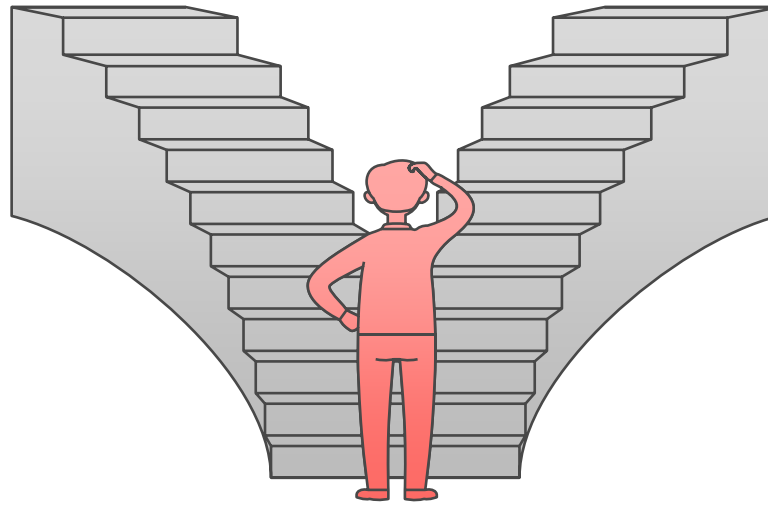
What is the penalty amount?

Fraud Case

Penalty is the tax due from the person chargeable with tax.

Non-Fraud Case

Penalty is **higher** of:
(i) 10% of tax due
or
(ii) ₹10,000**.



***₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

D. Issuance of order [Section 74A(6) and (7)]

The person chargeable with tax may give the representation to proper officer and the proper officer shall, after considering the representation, determine the amount of tax, interest and penalty due from such person and issue an order.

Time limit for issuance of order: The proper officer shall issue said order within 12 months from date of issuance of the SCN.

However, if the officer is unable to issue order within this time, the Commissioner or any officer authorised by the Commissioner who is senior in rank to the proper officer, but not below the rank of Joint Commissioner of Central Tax, may extend this period.

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Such extension can be given for a maximum of 6 months, provided reasons for the delay in issuance of order are recorded in writing, before the expiry of the original 12 months' period.

E. Payment of tax and interest and penalty[5] before issuance of SCN [Section 74A(8)(i), 74A(9)(i) & 74A(10)]

The law provides an opportunity to the person chargeable with tax to pay tax, interest and penalty before issuance of SCN. In that case, in non-fraud cases, penalty will be completely waived off and in fraud cases, penalty will be reduced to 15% of the tax.

The detailed provisions are as under:

- **Non-fraud cases:** In case of non-fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax), before the issue of SCN/statement:
  - on the basis of his own ascertainment of tax, or
  - the tax as ascertained by the proper officer

  and inform the proper officer in writing of such payment in prescribed form - Form DRC-03. An acknowledgement shall be made available to such person through the common portal electronically.

  The proper officer, on receipt of such information, shall not serve any SCN/statement, as the case may be, in respect of the tax so paid or any penalty payable under the provisions of GST law.

- **Fraud cases:** In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 15% of such tax, before the issue of SCN/ statement:
  - on the basis of his own ascertainment of tax, or
  - the tax as ascertained by the proper officer

[5] *In case of payment of tax and interest before issuance of SCN, penalty is payable only in fraud cases.*

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and inform the proper officer in writing of such payment in prescribed form - Form DRC-03. An acknowledgement shall be made available to the person through the common portal electronically.

The proper officer, on receipt of such information, shall not serve any SCN in respect of the tax so paid or any penalty payable under the provisions of GST law.

Where amount paid falls short of amount actually payable: Where the proper officer is of the opinion that the amount paid as above in fraud/non-fraud cases falls short of the amount actually payable, he shall proceed to issue SCN in respect of such amount which falls short of the amount actually payable.

- The **option of paying tax and interest** and penalty (in case of fraud cases) **before issuance of SCN** so as to avoid the issuance of SCN is available in both fraud as well as non-fraud cases.

F. Payment of tax and interest and penalty[6] within 60 days of issuance of SCN [Section 74A(8)(ii) & 74A(9)(ii)]

- **Non-fraud cases:** In case of non-fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax), within 60 days of issuance of SCN/statement,

  and inform the proper officer of such payment in prescribed form.

  In such cases, no penalty shall be payable and all proceedings in respect of the said SCN shall be deemed to be concluded. The proper officer shall issue an intimation in prescribed form concluding the proceedings in respect of the said SCN.

- **Fraud cases:** In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 25% of such tax, within 60 days of issuance of SCN/statement, and inform the proper officer of such payment in prescribed form.

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[6] *In case of payment of tax and interest within 60 days of issuance of SCN, penalty is payable only in fraud cases.*

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- In such cases, all proceedings in respect of the said SCN shall be deemed to be concluded. The proper officer shall issue an intimation in prescribed form concluding the proceedings in respect of the said SCN.

G. Payment of tax, interest and penalty within 60 days of communication of order [Section 74A(9)(iii)]

- In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 50% of such tax, within 60 days of communication of order, and all proceedings in respect of the said SCN shall be deemed to be concluded.

H. Penalty in case of non-payment of self-assessed tax or amount collected as tax, within 30 days of due date [Section 74A(11)]

In case of non-fraud cases, if the amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax, then following penalty shall be payable:

(i) 10% of tax

or

(ii) ₹ 10,000[7]

whichever is higher.

This provision is notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8) of section 74A. In other words, in such cases, imposition of penalty is mandatory with no option of waiver [as offered under section 74A(8)].

In case of non-payment of self-assessed tax and the amount collected as representing the tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment. The option to pay such tax before issuance of scn or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under section 74A(5)(i) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

[7] *₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

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For the purposes of section 74A:

(i) the expression **"all proceedings in respect of the said notice"** shall not include proceedings under section 132. Section 132 is in relation to prosecution. Thus, the person can be prosecuted under GST law even if no further demand can be raised for tax, interest or penalty. Prosecution in criminal court is independent of and can be in addition to, penalty imposed under GST law.

(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 74A, the proceedings against all the persons liable to pay penalty under sections 122 and 125[8] are deemed to be concluded. Sometimes, if a notice is issued to a company, notice may be also issued to its executive director, employees, transporter etc. for same cause of action. These are termed as 'co-noticees', while company is the 'main noticee'. Conclusion of proceedings against main noticee would be deemed to be conclusion of proceedings against all co-noticees also and the entire case will stand closed.

(iii) **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. Thus, definition of fv' is very clear that only if information that was required to be disclosed under the GST law (e.g. in return, statement or report or when specific query was raised) is not disclosed, that would amount to 'suppression'. It is not duty of a taxable person to disclose each material fact to the Department, if it is not asked for.

[8] *Provisions relating to sections 122 & 125 have been discussed in detail in Chapter 21 – Offences and Penalties and Ethics under GST in this Module of the Study Material.*

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SECTION 74A

Demand and Recovery in Fraud and Non-Fraud Cases

(Applicable from FY 2024-25 onwards)



1 Power to serve show cause notice (SCN)



Proper Officer (PO) shall serve the SCN to a person chargeable with tax in case of

- tax not paid
- short paid
- erroneously refunded
- ITC wrongly availed or utilized

No SCN to be issued if the amount involved is less than **₹ 1,000**

2 Time limit for issuance of notice

42 MONTHS from the

i. due date of furnishing annual return of the FY, to which such non-payment/ short payment of tax or ITC wrongly availed/utilized relates

ii. date of erroneous refund

3 Issuance of statement for subsequent periods

STATEMENT

- Tax not paid / short paid
- Erroneous refund
- ITC wrongly availed / utilized

For subsequent periods (other than covered under the original notice)

4 Deemed SCN

STATEMENT
DEEMED SCN

If grounds for issuing statement are same as in case of SCN

Such statement **shall** be deemed to be the SCN

5 Penalty

Non Fraud Cases

10% of the tax due or **₹10,000** whichever is higher

Fraud Cases

Equivalent to the tax due

In case where

Condition	Non Fraud Cases	Fraud Cases
Tax and Interest paid **before SCN**	NIL	15% of Tax Due
Tax and Interest paid within 60 days of SCN	NIL	25% of Tax Due
Tax and Interest paid within 60 days of communication of order		50% of Tax Due

6 Issue of order



PO shall determine the tax, interest and penalty after considering representation made by person chargeable with tax and issue an order.

7 Time Limit for issuance of order

- **12 months** from the date of issue of SCN
- Extension upto **6 months** permitted

8 Penalty in case of Self Assessed Tax or amount collected as tax

If in **non-fraud cases**, self-assessed tax or amount collected as tax is not paid within **30 days** from the due date, penalty shall be levied as follows:

10% of the tax due or **₹ 10,000** whichever is higher

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The above provisions have been summarized in the following table:

<table>
<tr><th>Section 74A
(Applicable from FY 2024-25 onwards)</th><th>Demand and recovery in fraud and non-fraud cases</th></tr>
<tr><td>Power to serve show cause notice (SCN)</td><td>Proper Officer (PO) shall serve the SCN to a person chargeable with tax in case of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilized.
No SCN to be issued if the amount involved is less than ₹ 1,000.</td></tr>
<tr><td>Time limit for issuance of notice</td><td>42 months from the
(i) due date of furnishing annual return of the FY, to which such non-payment/short payment of tax or ITC wrongly availed/utilized relates or
(ii) date of erroneous refund</td></tr>
<tr><td>Issuance of statement for subsequent periods</td><td>PO may serve a statement containing details of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilized, for subsequent periods other than covered under the original notice.</td></tr>
<tr><td>Deemed SCN if grounds for issuing statement are same as in case of SCN</td><td>Such statement shall be deemed to be the SCN but grounds for discrepancies in statement must be the same as those in original SCN</td></tr>
<tr><td>Penalty</td><td><table><tr><th>Non Fraud Cases</th><th>Fraud Cases</th></tr><tr><td>10% of the tax due or ₹ 10,000[9] whichever is higher</td><td>Equivalent to the tax due</td></tr></table></td></tr>
</table>

[9] *₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

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<table>
<tr><td></td><td>
<table>
<tr><th>In case where</th><th>Penalty in Non Fraud Cases</th><th>Penalty in Fraud Cases</th></tr>
<tr><td>Tax and Interest paid before SCN</td><td>NIL</td><td>15% of Tax Due</td></tr>
<tr><td>Tax and Interest paid within 60 days of SCN</td><td>NIL</td><td>25% of Tax Due</td></tr>
<tr><td colspan="2">Tax and Interest paid within 60 days of communication of order</td><td>50% of Tax Due</td></tr>
</table>
</td></tr>
<tr><td>Issue of order</td><td>PO shall determine the tax, interest and penalty after considering representation made by person chargeable with tax and issue an order.</td></tr>
<tr><td>Time Limit for issuance of order</td><td>• 12 months from the date of issue of SCN
• Extension upto 6 months permitted</td></tr>
<tr><td>Penalty in case of Self Assessed Tax or amount collected as tax</td><td>If in non-fraud cases, self-assessed tax or amount collected as tax is not paid within 30 days from the due date, penalty shall be levied as follows:
10% of the tax due or ₹ 10,000[10], whichever is higher.</td></tr>
</table>

Monetary limits prescribed for issuance of SCNs and passing of orders 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 passing orders under sections 74A[11], up to the prescribed monetary limits of tax (including cess) not paid/ short paid/ erroneously refunded/ ITC of tax (CGST/IGST/CGST & IGST) wrongly availed/utilized for issuance of SCNs and passing of orders under section 74A:

[10] *₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

[11] *made applicable to matters in relation to IGST vide section 20 of the IGST Act*

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

- *It is clarified that where a show cause notice issued under section 74A involves demand of both CGST and IGST (including cess), the proper officer shall be determined on the basis of the combined amount of CGST and IGST (including cess) [mentioned in Column 4 of the Table above], irrespective of the individual amounts of CGST or IGST (including cess) which may exceed the prescribed monetary limit.*
- *The proper officer shall be determined based on the highest amount of tax specified in the show cause notice and statement across all tax periods.*
- *The proper officer shall be determined based solely on the amount of tax demanded, excluding penalties from the calculations.*
- *Where the show cause notice has been issued by a proper officer within his monetary limit but the amount of tax demanded in the subsequent statement goes beyond his monetary limits and which pertains to monetary limit corresponding to the competency of a higher-ranked officer as per the prescribed monetary limits, the proper officer for issuing the statement shall also be decided on the basis of the prescribed monetary limits in Table above. The proper officer who has issued the earlier show cause notice and statement (if any issued), shall issue a corrigendum and make the earlier show cause notice and statement (if*

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any issued) answerable to the proper officer competent to adjudicate the statement with the higher amount of tax demanded.

- ***In case there is no change in the monetary limit when the statement is issued, the statement shall be issued by the same proper officer who has issued the show cause notice and he shall make the statement answerable to the same adjudication authority mentioned in the show cause notice issued earlier.***
- ***The proper officer shall be determined based solely on the amount of 'tax' demanded, excluding penalties from the calculations.***
- ***For notices issued by officers of Audit Commissionerate of Central Tax, the proper officer of the jurisdictional Central Tax Commissionerate of the noticee shall make the statement to be issued answerable to the adjudicating authority mentioned in the earlier show cause notice.***

[Circular No. 254/11/2025-GST dated 27.10.2025]

4. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [SECTION 75]

General provisions relating to determination of tax are contained in section 75 of CGST Act. These provisions are applicable both in case of determination of tax not paid/short paid/ erroneously refunded/ITC wrongly availed/ utilised whether by reason of fraud/any wilful misstatement/suppression of facts or otherwise.

These provisions have been discussed are as follows:

A. Period of stay order to be excluded in computing the limitation period [Section 75(1)]



Where the 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 for issuance of notice and issuance of adjudication order****, as the case may be.

***period as specified in sub-sections (2) and (7) of section 74A*[12].

[12] *sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74*

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B. In case charges of fraud/any wilful misstatement/suppression of facts are not established for a notice issued in a fraud case, penalty prescribed for non-fraud cases is payable [Section 75(2A)]

Where any Appellate Authority or Appellate Tribunal or Court concludes that the penalty prescribed for fraud cases under section 74A 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 against the person to whom the notice was issued, the penalty prescribed for non-fraud cases under section 74A shall be payable by such person.

C. Adjudication order issued in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction be issued with 2 years [Section 75(3)]

Where 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 2 years from the date of communication of the said direction.

D. Opportunity of being heard [Section 75(4)]

An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

Adjournment of hearing to grant time to person chargeable with tax [Section 75(5)]

The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.

However, such adjournment shall be granted for a **maximum of 3 times** to a person during the proceedings.

E. Adjudication order should be a speaking order [Section 75(6)]



The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

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F. Tax, interest and penalty demanded in order not to exceed amount specified in notice [Section 75(7)]

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.

G. In case of modification of tax by the Appellate Authority/ Tribunal/ Court, penalty and interest to be modified accordingly [Section 75(8)]

Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

H. Payment of interest mandatory even if not specified in the adjudication order [Section 75(9)]

The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

I. Adjudication order to be passed mandatorily within stipulated time [Section 75(10)]

The GST law ensures timely disposal of cases by providing that if the adjudication order is not issued within the stipulated time limit of 1 year of issuance of SCN, the adjudication proceedings shall be deemed to be concluded.

J. In case of appeal filed by Department against prejudicial decision of the Appellate Authority/ Appellate Tribunal/ High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded [Section 75(11)]

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High

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Court and that of the Supreme Court shall be excluded in computing the time limit for passing adjudication order, where proceedings are initiated by way of issue of a SCN under the sections 73 and 74 ***or section 74A***.

K. Amount of self-assessed tax or interest remaining unpaid to be recovered under section 79 [Section 75(12)]

Notwithstanding anything contained in section 73 or section 74 or section 74A, 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 *[discussed subsequently in this chapter]*.

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.

The scope of the term **"self-assessed tax"** is wide enough and hence the recovery proceedings may be initiated under section 79, subject to the procedure/CBIC guidelines applicable to such mismatch cases. In other words, where the tax payable in respect of details of outward supplies furnished in Form GSTR-1, has not been paid through Form GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79.

However, the difference/mismatch between details of Form GSTR-1 and Form GSTR-3B may arise due genuine reasons:

For instance,

- a typographical error/wrongly reported details in Form GSTR-1 or Form GSTR-3B which may be rectified in subsequent Form GSTR-1 or Form GSTR-3B, or
- where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in Form GSTR-3B of said tax period; details may now be reported in the Form GSTR-1 of the current tax period.

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Therefore, *Instruction No. 01/2022 GST dated 07/01/2022* provides that in case of mismatch between Form GSTR-1 and Form GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either (i) fails to reply to the proper officer, or (ii) fails to make the payment of such amount short paid/not paid within the prescribed time or (iii) fails to explain the reasons for such amount short paid/not paid.

L. In case of penalty being imposed under section 73/74 or 74A, no other penalty to be imposed for the same act/omission [Section 75(13)]

Where any penalty is imposed under section 73 or section 74 or 74A, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

5. TAX COLLECTED BUT NOT DEPOSITED [SECTION 76]



The provisions of this section are based on the principle that nobody should be unjustly enriched in the name of Revenue. If any amount is collected in the name of tax, the same must be deposited with the Government.

Such situation may arise in case where tax is collected on supplies on which the tax is leviable, but such tax is not deposited with the Government or where tax is collected on supplies on which tax is not leviable at all, and thus, tax collected is not deposited with the Government.

The detailed provisions of this section have been discussed hereunder:

A. Amount representing tax collected from any person to be paid to the Central Government [Section 76(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

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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.

B. Issue of SCN [Section 76(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.

C. Determination of amount due [Section 76(3)]

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

D. Interest payable on the amount [Section 76(4)]

- The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon.
- Interest is payable at the rate specified under section 50.
- Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

E. Opportunity of being heard [Section 76(5)]

An opportunity of hearing shall be granted where a request is received in writing from the person to whom SCN was issued.

F. Time limit for issuance of order [Section 76(6) & (7)]

The proper officer shall issue an order within **1 year** from the date of issue of the notice.

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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 **1 year**.

G. Order must be a speaking order [Section 76(8)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

H. Adjustment of amount payable under section 76(1) and (3) [Section 76(9), (10) & (11)]

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).

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

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.



6. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT [SECTION 77]

A registered person who has paid the CGST and SGST or, as the case may be, the CGST and the UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of CGST and SGST or, as the case may be, the CGST and the UTGST tax payable.

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Similar provisions are contained in section 19 of the IGST Act, 2017.

Section 19 provides that a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed. A registered person who has paid CGST and SGST or, as the case may be, the CGST and the UTGST, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

Clarification in respect of refund of tax specified in section 77 of the CGST Act and section 19 of the IGST Act

It is clarified that the term "subsequently held" in said sections covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding, for instance, scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.



(1) Ram Associates, a registered person, pays IGST on a transaction treating the same as inter-State supply by mistake, though it was an intra-state supply. In this case, Ram Associates has to pay CGST and SGST/UTGST, without any interest. He can thereafter claim refund of IGST which was erroneously paid.

7. RECOVERY PROCEEDINGS [SECTIONS 78 & 79]

The recovery proceedings are final steps towards the realisation of any tax or any other amount, which has been confirmed as payable after following the due process of adjudication by the proper officer. These recovery provisions under the CGST Act, 2017 lay down a well-defined procedure which is as follows:

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A. Initiation of recovery proceedings [Section 78]



Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid by such person within a period of **3 months** from the date of service of such order. If a taxable person fails to do so, recovery proceedings are initiated against him.

However, where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period **less than a period of 3 months** as may be specified by him.

B. Recovery of tax [Section 79]

If the payable amount is not paid by a person within the specified time limit of 3 months, recovery proceedings shall be initiated and various actions may be taken by the recovery officer, for realisation of Government dues. Recovery of taxes can also be made from distinct persons [referred to in section 25(4) & (5)[13]] present in different States/ UTs.

The options for recovery of Government dues include deduction of money from any amount payable to such tax payer, detaining and selling any goods, directing any other person from whom the money is due to such person, attaching any property belonging to the defaulter etc.

MODES OF RECOVERY OF TAX [SECTION 79(1)]



Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by **one or more of the following modes**, namely:

(i) Recovery by deduction from any money owed [Section 79(1)(a) read with rule 143]

The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person

[13] *Concept of distinct persons has been explained in detail in Chapter 1 – Supply under GST in Module 1 of the Study Material.*

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[referred as 'defaulter'] which may be under the control of the proper officer or such other specified officer.

> **Specified officer** shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

(ii) Recovery by sale of goods under the control of proper officer [Section 79(1)(b) read with rule 144]

- The proper officer may recover or may require any other specified officer to recover the amount so payable from a defaulter by detaining and selling any goods [through a process of auction, including e-auction] belonging to such person which are under the control of the proper officer or such other specified officer.
- The proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.
- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.

(iii) Garnishee proceedings - Recovery from a third person [Section 79(1)(c) read with rule 145]

- The proper officer may, by a notice in prescribed form, in writing, require any other person:
  - from whom money is due/may become due to such person or
  - who holds/may subsequently hold money for/on account of such person to pay to the Government
  - either forthwith upon the money becoming due or being held, or

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- within the time specified in the notice not being before the money becomes due or is held,

so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

- Every person to whom the notice is issued hereunder shall be bound to comply with such notice.
- Where any such 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 or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
- In case the person to whom notice is issued hereunder, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow.
- The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.
- Any person making any payment in compliance with the notice issued hereunder shall be deemed to have made the payment under the authority of the person in default.
- Further, such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt.
- Any person discharging any liability to the person in default after service on him of the notice shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.

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- Where a person on whom a notice is served hereunder proves to the satisfaction of the officer issuing the notice that:
  - the money demanded/any part thereof was not due to the person in default or
  - he did not hold any money for/on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person/be held for/on account of such person,

  nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.
- Where the third person makes the payment of the amount specified in the notice, the proper officer shall issue a certificate in prescribed form to the third person clearly indicating the details of the liability so discharged.

(iv) Recovery by sale of movable/immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154]

- 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 [through auction including e-auction] 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 [Section 79(1)(d)].
- The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.

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In case of attachment/ distraint of	
an immovable property	order shall be affixed on the property till the confirmation of sale
a movable property	proper officer shall seize the property and take its custody.

- Stamp duty/any other tax/fee payable on transfer of such property shall be paid by the transferee to the Government.
- Any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in/in the custody of any Court shall be attached in the manner provided in rule 151 *[discussed subsequently in this chapter]*.
- Where any claim is preferred/any objection is raised with regard to the attachment/distraint of any property by a person claiming that he had some interest in/was in possession of, the property in question, proper officer shall investigate the same and postpone the sale till such time.
- If proper officer finds merit in his claims/objection upon investigation, proper officer will release the property, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.
- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.
- The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under section 129(3) shall,-

  (a) first, be appropriated against the administrative cost of the recovery process;

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(b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under section 129(3), as the case may be;

(c) next, be appropriated against any other amount due from the defaulter under the CGST Act/IGST Act/UTGST Act/any of the SGST Act and the rules made thereunder; and

(d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the GST law, and where the said person is not required to be registered under the GST law, the said amount shall be credited to the bank account of the person concerned;

- Where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of 6 months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.
- Where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.
- Any officer/other person who has a duty to perform in connection with such sale will not acquire any interest in property sold.
- No such sale will take place on Sundays/other general holidays recognized by Government.
- Proper officer may seek assistance from jurisdictional police station.

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(v) Recovery as arrears of land revenue [Section 79(1)(e) read with rule 155]

- The proper officer may prepare a certificate in prescribed form signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(vi) Recovery as fine imposed by Magistrate [Section 79(1)(f) read with rule 156]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate in prescribed form to recover from the person concerned the amount specified thereunder and such Magistrate shall proceed to recover from such person amount specified thereunder as if it were a fine imposed by him.

(vii) Recovery through execution of a decree, etc. [Rule 146]

Where any amount is payable to the defaulter in the 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.

(viii) 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 were the defaulter.

(ix) 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.

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Other provisions governing recovery of tax [Section 79(2), (3) & (4)]

- 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 sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section [Section 79(2)].

- Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government [Section 79(3)].

  Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government [Section 79(4)].

8. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS [SECTION 80]

Considering various business aspects, the provisions for payment of all such amounts, other than self-assessed tax, in instalments have also been made in the Act.



A person can avail this benefit of payment in instalments, by making an application to the Commissioner by specifying reasons for such request.

On receipt of application, the Commissioner may allow the payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest.

If there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.

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Provisions of section 80 read alongwith rule 158 have been explained in detail as under:

- A taxable person, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments, shall furnish an application for the same in prescribed form.
- Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- Commissioner may, upon consideration of the same, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding 24, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.
- However, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.
- **Facility of payment in instalments not allowed in certain cases:** The facility of payment in instalments shall not be allowed where -

  (a) 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;

  (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the IGST Act or UTGST Act or any of the SGST Act;

  (c) the amount for which instalment facility is sought is less than ₹ 25,000.

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9. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [SECTION 81]

- Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.



- However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the 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.

10. TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

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.

11. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [SECTION 83]

- Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV**,** 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 [Section 83(1)].



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- 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) [Section 83(2)].

The related provisions contained in CGST Rules are as follows:

(i) Provisional attachment of property [Rule 159]

- Where the Commissioner decides to attach any property, including bank account in accordance with aforesaid provisions, he shall pass an order to that effect mentioning therein, the details of property which is attached.
- The Commissioner shall send a copy of the order of attachment 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:

  (i) on the written instructions from the Commissioner to that effect

  or

  (ii) on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property,

  whichever is earlier.
- A copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.
- Where the property attached is of perishable or hazardous nature, and if the taxable person pays:

  (i) an amount equivalent to the market price of such property

  or

  (ii) the amount that is or may become payable by the taxable person

  whichever is lower

  then such property shall be released forthwith, by an order in prescribed form, on proof of payment.

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- However, where the taxable person fails to pay the amount referred above in respect of the said property of perishable/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 person.
- Any person whose property is attached may at any time of the attachment, file an objection 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.
- The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order.

(ii) Attachment of debts and shares, etc. [Rule 151]

- A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in prescribed form prohibiting:

  (a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;

  (b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

  (c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

- A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.
- A debtor, prohibited hereunder, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

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(iii) Attachment of property in custody of courts or Public Officer [Rule 152]

- Where the property to be attached is in the custody of any Court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

(iv) Attachment of interest in partnership [Rule 153]

- Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.
- The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

12. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [SECTION 84]

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as Government dues), is served upon any taxable p erson or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then:

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand

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served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings ––

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Proceedings conducted under IBC covered under the term 'other proceedings' in section 84

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

[Circular No. 187/19/2022 GST dated 27.12.2022]

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TEST YOUR KNOWLEDGE

1. *Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76.*

2. *Discuss briefly the time limit for issue of show cause notice as contained under section 74A in case where (i) the short payment is on account of fraud, and (ii) the short payment is on account of a bonafide error.*

3. *Is there any time limit prescribed for adjudication of the cases under the CGST Act, 2017? If yes, discuss the same.*

4. *A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest and penalty before issuance of show cause notice. Is any option of reduced penalty available to such person?*

5. *Briefly discuss the modes of recovery of tax available to the proper officer.*

6. *Enlist the circumstances under which a show cause notice can be issued by the proper officer under section 74A. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 74A.*

7. *Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.*

   The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

8. *Anant & Co. self-assessed its CGST liability as ₹ 90,000 for the month of April, but failed to make the payment.*

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Subsequently, the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 74A for failure to pay GST and issued show cause notice on 10th August.

Anant & Co. deposited the tax along with interest on 25th August and informed the Department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of ₹ 90,000) under the CGST Act.

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.

9. *Arnav Enterprises, a registered supplier located in Madhya Pradesh, has duly filed its monthly GST returns for the financial year 2025–26. During the scrutiny of its returns for the said financial year in August 2026, the proper officer noticed an inadvertent short payment of CGST and SGST totaling ₹ 4,60,000 in the month of October 2025, on account of a bonafide error. Before issuance of the show cause notice by the proper officer, Arnav Enterprises paid the tax of ₹ 1,00,000 (₹ 50,000 CGST and ₹ 50,000 SGST) on the basis of its own ascertainment along with applicable interest and with penalty, if any, on 15th September 2026 and informed the proper officer in writing of such payment.*

Based on the facts above, answer the following:

(1) Ascertain the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises.

(2) Determine the amount of penalty, if any, payable on the payment of tax of ₹ 1,00,000 by Arnav Enterprises on the basis of its own ascertainment along with applicable interest on 15th September 2026.

(3) Assuming that the proper officer decides to issue a show cause notice under section 74A on 10th October 2026, determine the maximum amount of tax for which he can issue the show cause notice. Ascertain the last date by which the proper officer should issue order under section 74A assuming that show cause notice is issued by proper officer on said date.

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(4) In continuation of sub-part (3) above, if proper officer issues a show cause notice under section 74A on 10th October, 2026 for the amount of tax so allowed and Arnav Enterprises decides to pay said tax along with applicable interest, on 5th December, 2026, you are required to determine penalty, if any, payable by Arnav Enterprises.

In each of the above cases, will your answer be different if the short payment of tax is on account of fraud, other facts remain the same?

Note – Assume that the due date for furnishing annual return has not been extended and limitation period for issuance of order under section 74A has not been extended by the Commissioner. Ignore computation of interest in the above question.



ANSWERS

1. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, 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.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest 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.

2. The proper officer can issue a show cause notice within 42 months from the due date of furnishing the annual return for relevant financial year to which short payment relates to [Section 74A(2)]. It is important to note that section 74A stipulates the same limitation period for issuance of show cause notice

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whether the short payment is on account of fraud or on account of a bonafide error.

3. The proper officer shall issue said order within 12 months from date of issuance of the SCN. However, if the officer is unable to issue order within this time, the Commissioner or any officer authorised by the Commissioner who is senior in rank to the proper officer, but not below the rank of Joint Commissioner of Central Tax, may extend this period.

Such extension can be given for a maximum of 6 months, provided reasons for the delay in issuance of order are recorded in writing, before the expiry of the original 12 months' period.

4. Yes. In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 15% of such tax, before the issue of SCN/ statement, on the basis of his own ascertainment of tax, or the tax as ascertained by the proper officer, and inform the proper officer in writing of such payment in prescribed form - Form DRC-03. An acknowledgement shall be made available to the person through the common portal electronically.

The proper officer, on receipt of such information, shall not serve any SCN in respect of the tax so paid or any penalty payable under the provisions of GST law.

5. The proper officer may recover the dues in following manner:

(a) Deduction of dues from the amount owned by the tax authorities payable to such person.

(b) Recovery by way of detaining and selling any goods belonging to such person;

(c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;

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(d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

(e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.

(f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.

(g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.

(h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

6. As per section 74A, a show cause notice can be issued by the proper officer if it appears to him that:

- ❑ tax has not been paid; or
- ❑ tax has been short paid; or
- ❑ tax has been erroneously refunded; or
- ❑ input tax credit has been wrongly availed or utilized,

whether by reason of fraud or any wilful misstatement or suppression of facts to evade tax or for reason other than fraud or any wilful misstatement or suppression of facts to evade tax.

In either of the cases as enumerated above, the SCN should be issued within 42 months or 3.5 years from due date for furnishing of annual return for the financial year to which the tax not paid or short paid, etc. relates to, or the date of erroneous refund.

The proper officer shall issue said order within 12 months from date of issuance of the SCN. However, if the officer is unable to issue order within this time, the Commissioner or any officer authorised by the Commissioner who is senior in rank to the proper officer, but not below the rank of Joint Commissioner of Central Tax, may extend this period.

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Such extension can be given for a maximum of 6 months, provided reasons for the delay in issuance of order are recorded in writing, before the expiry of the original 12 months' period.

7. The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 stipulates that 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 the CGST 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.

Where any amount is required to be paid to the Government as mentioned above, 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.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

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8. Due date for payment of tax for the month of April is 20th May.

As per section 74A, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 60 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

(i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or

(ii) ₹ 10,000,

whichever is higher, is payable by him under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

Hence, the stand taken by the Department that penalty will be levied on Anant & Co. is correct, but the amount of penalty of ₹ 45,000 under the CGST Act is not correct.

9. **(1)** The proper officer can issue a show cause notice within 42 months from the due date of furnishing the annual return for relevant financial year to which short payment relates to [Section 74A(2)]. For the financial year 2025–26, the due date for furnishing the annual return is 31st December, 2026. Therefore, the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises is 30th June 2030.

Further, section 74A stipulates the same limitation period for issuance of show cause notice whether the short payment is on account of fraud or on account of a bonafide error. Thus, answer will remain same if the short payment of tax is on account of fraud.

(2) The person chargeable with tax where any tax has been short paid, may, before service of show cause notice, pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any show cause notice in respect of the tax so paid or

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any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(8)(i)].

Thus, no penalty is payable by Arnav Enterprises in respect of payment of tax of ₹ 1,00,000 before issuance of show cause notice. No show cause notice will be issued by the proper officer in respect of the tax of ₹ 1,00,000 so paid.

However, in case where the short payment of tax is on account of fraud, the person chargeable with tax, may before service of show cause notice, pay the amount of tax along with interest payable under section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any show cause notice, in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(9)(i)].

Thus, a penalty of ₹ 15,000 [₹ 1,00,000 × 15%] is payable by Arnav Enterprises alongwith payment of tax of ₹ 1,00,000 with applicable interest, before issuance of show cause notice. No show cause notice will be served by the proper officer after payment of tax alongwith interest and penalty, in respect of the tax so paid.

(3) Since Arnav Enterprises has paid the tax of ₹ 1,00,000 alongwith interest before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(8)(i)].

However, where the proper officer is of the opinion that the amount paid under section 74A(8)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)].

Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000].

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In case where the short-payment is on account of fraud, answer will be as follows:

Since Arnav Enterprises has paid the tax of ₹ 1,00,000 alongwith applicable interest and penalty before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(9)(i)].

However, where the proper officer is of the opinion that the amount paid under section 74A(9)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)].

Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000].

Further, the proper officer is required to issue the order within 12 months from the date of issuance of show cause notice, in both fraud and non-fraud cases [Section 74A(7)]. Thus, in the given case, the proper officer has to issue the order on or before 10th October, 2027, whether the short payment is on account of fraud or on account of a bonafide error.

(4) Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under section 50 within 60 days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(8)(ii)].

Thus, in the given case, since Arnav Enterprises has paid the tax of ₹ 3,60,000 alongwith applicable interest within 60 days of issuance of show cause notice, i.e. on or before 9th December, 2026, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

In case where the short-payment is on account of fraud, answer will be as follows:

Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under section 50 and

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a penalty equivalent to 25% of such tax within 60 days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(9)(ii)].

Thus, in the given case, Arnav Enterprises has to pay penalty of ₹ 90,000 [₹ 3,60,000 ×25%]. If Arnav Enterprises has paid the tax of ₹ 3,60,000 alongwith applicable interest and penalty of ₹ 90,000 [₹ 3,60,000 ×25%] on 5th December, 2026, which is within 60 days of issuance of show cause notice, i.e. on or before 9th December, 2026, all proceedings in respect of the said notice shall be deemed to be concluded.

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ANNEXURE

As discussed earlier, sections 73 and 74 prescribe the provisions for determining tax, pertaining to the period upto Financial year 2023-24, 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 or by fraud or reason of wilful misstatement or suppression of facts. Circulars have been issued in pursuance of these provisions. While these circulars seem *prima facie* relevant under the new section 74A as well, the CBIC has not yet clarified the same. Once CBIC issues guidance on the applicability of those circulars under section 74A, the applicability of these circulars for the relevant examination will be clarified by the ICAI by way of Statutory Update. These circulars are as follows:

1. Clarification on levy of penalty under section 73(11) in case of delayed filing of return

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

Clarification: The provisions of section 73(11) can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 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.

It is accordingly clarified that penalty under the provisions of section 73(11) is not payable in such cases. 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 may be imposed after following the due process of law *[Circular No. 76/50/2018 GST dated 31.12.2018]*.

2. Clarification on various issues relating to applicability of demand and penalty provisions under CGST Act in respect of transactions involving fake invoices

A number of cases have been noticed where the registered persons are found to be involved in issuing tax invoice (fake invoices), without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize ITC fraudulently.

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Circular No. 171/03/2022 GST dated 06.07.2022 clarifies the applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices as follows:

Sl. No.	Issues	Clarification
1.	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, (i) whether such transaction will be covered as supply under section 7? (ii) 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? (iii) whether any penal action can be taken against registered person 'A' in such cases?	Since there has 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. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7, 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/section 74 in respect of the same. Besides, no penal action under the provisions of section 73/section 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods or services or both.

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2.	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 ITC 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/section 74 or any other provisions of the CGST Act?	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), he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, along with applicable interest under provisions of section 50. Further, as per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74, 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 the CGST Act, including under section 122.
3.	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 ITC** on the basis of the said tax invoice and further **passes on the said ITC** to another registered person 'C' by issuing invoices **without underlying supply** of goods or services or both.	In this case, the ITC 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 ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction,

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	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.	no tax was required to be paid by 'B' in respect of the same. The ITC 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). 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/section 74. However, in such cases, 'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii), 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.

The fundamental principles that have been outlined in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the

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case which may involve a complex mixture of above scenarios or even may not be covered by any of the above scenarios.

Any person who has retained the benefit of transactions specified under section 122(1A), and at whose instance such transactions are conducted, shall also be liable for penal action under section 122(1A).

It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of ITC, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of ITC or refund of tax, provisions of section 132 may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

3. Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial/full GST liability arising out of the issue pointed out by the Department during the course of such search, inspection or investigation. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability have alleged use of force and coercion by the officers for making recovery during the course of search, inspection or investigation.

Consequently, the legal position of voluntary payment of taxes has been clarified for ensuring correct application of law and for protecting the interest of the taxpayers.

Under the CGST Act, the taxpayers have an option to make voluntary payment of tax. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5)[14]. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

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[14] *Sections 73 and 74 contain the provisions for determination of tax, pertaining to the period upto Financial year 2023-24, 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 .*

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Recovery of taxes not paid or short paid, can be made under the provisions of section 79 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where **"recovery"** of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings.

However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments.

[Instruction No. 01/2022-23 [GST-Investigation] dated 25.05.2022]

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