

Chapter 31: Demand and Adjudication

SYNOPSIS

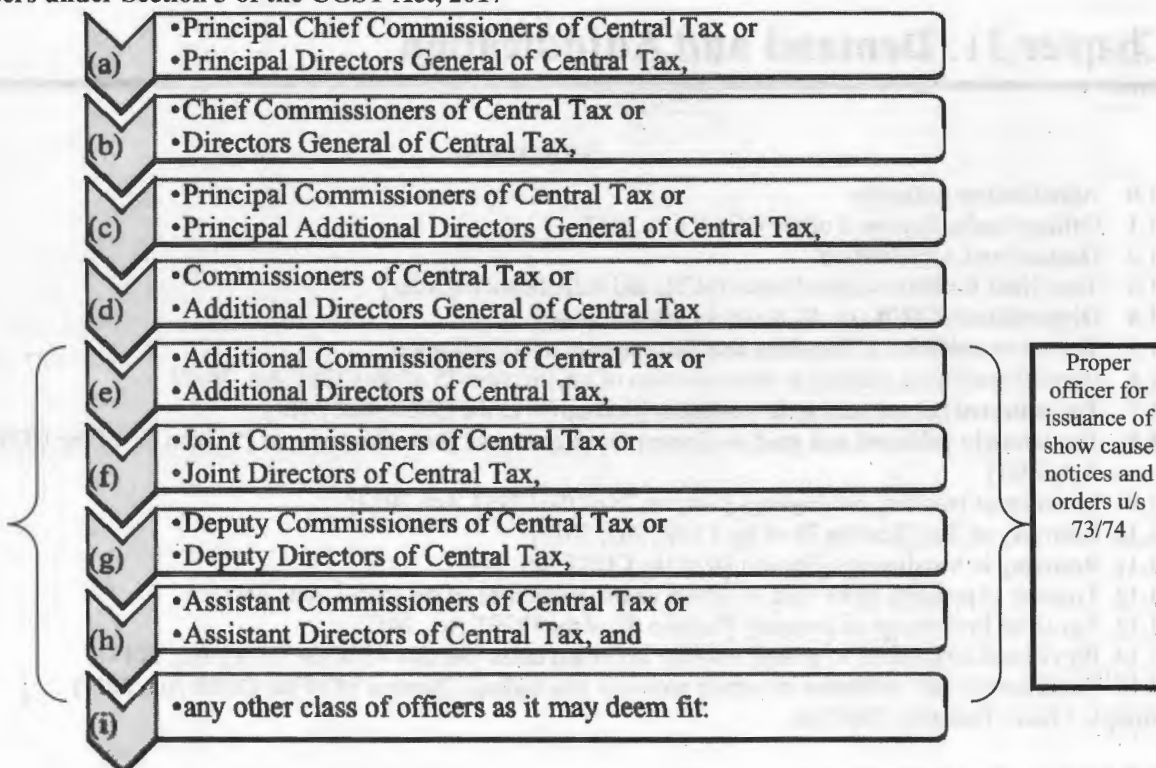
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31.0 Adjudicating Authority

As per Section 2(4) of the CGST Act, 2017 “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include

- the Central Board of Excise and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority and
- the Appellate Tribunal;

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31.1 Officers under Section 3 of the CGST Act, 2017**31.2 Demand and Adjudication**

Show Cause Notice can be issued by proper officer to a registered person where it appears to him that tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, asking him to show cause as to why the said tax be not demanded and recovered from him.

Where it appears to the proper officer that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for reason, other than of fraud or any willfull misstatement or suppression of facts to evade tax, he can issue show cause notice upto 3 months prior to normal period of demand within 3 years from the due date for furnishing of annual return for the financial year to which said demand pertains (i.e. show cause notice to be issued within 2 years and 9 months) as per section 73(1) and (2) read with section 73(10) of the CGST Act, 2017.

Where it appears to the proper officer that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for reason, by reason of fraud or any willfull misstatement or suppression of facts to evade tax, he can issue show cause notice upto 6 months prior to extended period of demand within 5 years from the due date for furnishing of annual return for the financial year to which said demand pertains (i.e. show cause notice to be issued within 4 years and 6 months) as per section 74(1) and (2) read with section 74(10) of the CGST Act, 2017.

Proper Officer under Section 73 and 74 of CGST and under IGST (vide CBIC Circular No. 31/05/2018-GST, dated 9-2-2018):

Superintendents of Central Tax can issue show cause notices and orders under section 73 and 74 of the CGST Act, 2017.

All officers upto the rank of Additional/Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under subsections (1), (2), (3), (5), (6), (7), (9) and (10) of sections 73 and 74 of the CGST Act.

Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") as well, as per section 3 read with section 20 of the said Act.

Monetary limits to issue notices and orders are notified:

Monetary limit of the amount of central tax (including cess)/IGST not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act.

S. No.	Officer of Central Tax	CGST (including cess)	IGST (including cess)	CGST & IGST (including cess)
1	Superintendent of Central Tax	≤ ₹10 lakhs	≤ ₹20 lakhs	≤ ₹20 lakhs
2	Deputy or Assistant Commissioner of Central Tax	> ₹10 lakhs ≤ ₹1 crore	> ₹20 lakhs ≤ ₹2 crore	> ₹20 lakhs ≤ ₹2 crore
3	Additional or Joint Commissioner of Central Tax	> ₹1 crore without any limit	> ₹2 crore without any limit	> ₹2 crore without any limit

The central tax officers of Audit Commissionerate's and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers **only** to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerate's, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

Notwithstanding anything contained in above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerate's and where the central tax and/or integrated tax (including cess) involved is more than **₹5 crores** shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

Section 73:		Section 74	
Sub-sections		Sub-sections	
(1)	Non-payment of tax other than for any reason other than fraud	(1)	Non-payment of tax by any reason of fraud
(2)	The proper officer shall issue the notice under sub-section (1) at least 3 months prior to the time limit specified in sub-section (10) for issuance of order. (i.e. 2 years 9 months)	(2)	The proper officer shall issue the notice under sub-section (1) at least 6 months prior to the time limit specified in sub-section (10) for issuance of order. (i.e. 4 years 6 months)
(3)	Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.	(3)	Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
(4)	The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.	(4)	The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

Section 73: Sub-sections		Section 74 Sub-sections	
(5)	The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 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.	(5)	The person chargeable with tax may, before service of notice under sub-section (1), 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.
(6)	The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.	(6)	The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
(7)	Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.	(7)	Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
(8)	Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.	(8)	Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.
(9)	The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹10,000 , whichever is higher, due from such person and issue an order.	(9)	The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
(10)	The proper officer shall issue the order under sub-section (9) within 3 Years from the due date for furnishing of 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 or within 3 Years from the date of erroneous refund.	(10)	The proper officer shall issue the order under sub-section (9) within a period of 5 Years from the due date for furnishing of 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 or within 5 Years from the date of erroneous refund.
(11)	Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) 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. As per Circular No. 76/50/2018-GST, dated 31st December, 2018: It is clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in case of delayed filing of the return in FORM GSTR-3B	(11)	Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Section 73: Sub-sections		Section 74 Sub-sections	
	because tax along with applicable interest has already been paid but after the due date for payment of such tax.		

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

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

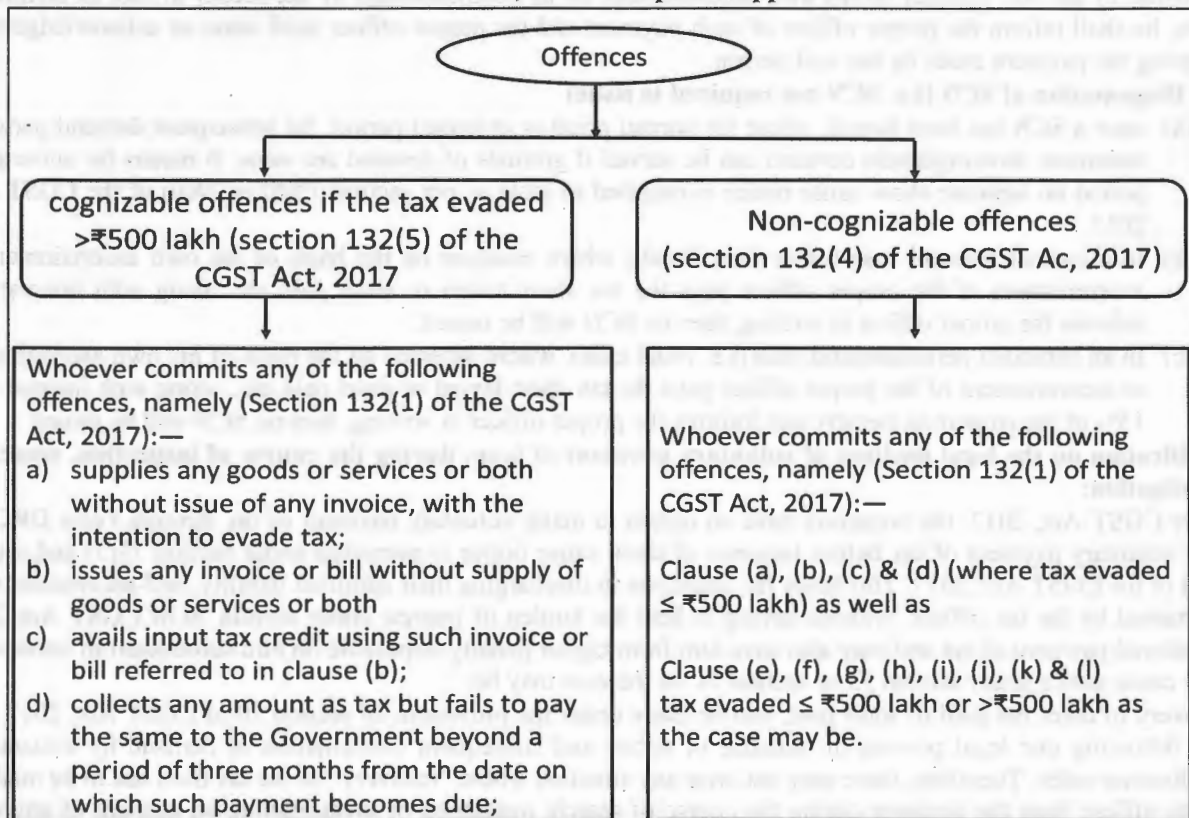
Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Intimation before show cause notice under section 73 or 74 of CGST Act, 2017 [Notification No. 49/2019-CT, dated 09.10.2019]:

With effect from 09.10.2019, the proper officer shall, before serving of such a notice, 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 under section 73 or section 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.

Where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer as mentioned above, he shall inform the proper officer of such payment and the proper officer shall issue an acknowledgement, accepting the payment made by the said person.

Offences under GST Sec. 132 of the CGST Act, 2017 - Simplified approach:



31.3 Time limit for Show Cause Notice (SCN) and Adjudication (Order)

Nature of transaction	Time for issuance of SCN	Time of issuance of order
Other than fraud	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 73(2) of the CGST Act, 2017	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 73(10) of the CGST Act, 2017
Fraud case	Within 4 years and 6 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 74(2) of the CGST Act, 2017	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 74(10) of the CGST Act, 2017
Any amount collected as tax but not paid Section 76(1) and (2) of the CGST Act, 2017.	No time limit	Within 1 Year from the date of issue of notice. Section 76(6) of the CGST Act, 2017
Non-payment of self-assessed tax	No need to issue a show cause notice	Recovery proceedings can be started directly.

Intimation before show cause notice under section 73 or 74 of CGST Act, 2017 [Notification No. 49/2019-CT, dated 09.10.2019]:

With effect from 09.10.2019, the proper officer shall, before serving of such a notice, 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 under section 73 or section 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.

Where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer as mentioned above, he shall inform the proper officer of such payment and the proper officer shall issue an acknowledgement, accepting the payment made by the said person.

31.4 Dispensation of SCN (i.e. SCN not required to issue)

- once a SCN has been issued, where for normal period or extended period, for subsequent demand period, a statement showing details demand can be served if grounds of demand are same. It means for subsequent period no separate show cause notice is required to issue as per section 73(6) or 74(6) of the CGST Act, 2017.
- In a normal demand case (other than fraud), where assessee on the basis of his own ascertainment or ascertainment of the proper officer pays the tax short levied or short paid etc. along with interest and informs the proper officer in writing, then no SCN will be issued.
- In an extended period demand case (i.e. fraud case), where assessee on the basis of his own ascertainment or ascertainment of the proper officer pays the tax short levied or short paid etc., along with interest with 15% of the amount as penalty and informs the proper officer in writing, then no SCN will be issued.

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

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5) of the CGST Act, 2017. 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 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposed on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 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 through DRC-03.

The Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

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

31.5 Waiver or reduction of Penalties and Dispensation of Adjudication

Nature of offence	Time limit	Quantum of penalty
Person liable to pay Tax if the same: <ul style="list-style-type: none"> • not paid, or • short paid, or • erroneously refunded, or • input tax wrongly availed, or utilized for any reason other than fraud or wilful misstatement or suppression of facts to evade tax. 	Time Limit for issue of Show Cause Notice (Section 73(2)): <ul style="list-style-type: none"> • 3 months prior to the time limit for issuance of order as per section 73(10) Time Limit for issuance of Order (Section 73(10)): <ul style="list-style-type: none"> • 3 years from the due date of furnishing of Annual return for the relevant FY, or • 3 years from the date of erroneous refund 	(1) Nil (Zero) if amount due is paid with interest prior to or within 30 days of issuance of SCN (Section 73(8) of the CGST Act, 2017). Hence, the case would be concluded without resorting to adjudication proceedings and without imposing penalty. For this purpose, the assessee shall intimate the proper officer of such payment in Form GST DRC-03 and the proper officer shall issue an order in Form GST DRC-05 concluding the proceedings in respect of the said notice. (2) 10% of tax amount due or ₹10,000/- whichever is higher as per the adjudication order (section 73(9) of the CGST Act, 2017). (3) 10% of tax amount due or ₹10,000/- whichever is higher if self-assessed tax or amount collected as tax has not been paid within period of 30 days from the due dates of payment of such tax (section 73(11) of the CGST Act, 2017).
Person liable to pay Tax if the same: <ul style="list-style-type: none"> • not paid, or • short paid, or • erroneously refunded, or • input tax wrongly availed, or utilized by reason of fraud or any wilful-mis-statement or suppression of facts to evade tax. 	Time Limit for issue of Notice (Section 74(2)): <ul style="list-style-type: none"> • 6 months prior to the time limit for issuance of order as per section 74(10)). Time Limit for issuance of Order (Section 74(10)): <ul style="list-style-type: none"> • 5 years from the due date of furnishing of Annual return for the relevant FY, or • 5 years from the date of erroneous refund 	(1) 15% if tax amount due is paid with interest prior to issuance of SCN (section 74(5) of the CGST Act, 2017). (2) 25% of tax amount if the same is paid with interest within 30 days of issuance of SCN (section 74(8) of the CGST Act, 2017). Hence, the case would be concluded without resorting to adjudication proceedings. For this purpose, the assessee shall intimate the proper officer of such payment in Form GST DRC-03 and the proper officer shall issue an order in Form GST DRC-05 concluding the proceedings in respect of the said notice. The proper officer shall issue an acknowledgement, accepting the payment made by the said person in Form GST DRC-04. (3) 50 % of tax amount if the same is paid with interest within 30 days of issuance of adjudication order (section 74(11) of the CGST Act, 2017). Adjudicating proceedings will be concluded as stated above. (4) 100% of tax amount due (section 74(1) of the CGST Act, 2017)

The taxpayers and/or the tax authorities have got an extended time limit of up to 30th June 2020, where the time limit for the following compliance matter expires between 20th March 2020 and 29th June 2020:

- Issue of notice/notification/approval order/sanction order
- Filing of an appeal/furnishing of a return/statements/applications/reports or any other documents

Clarification on levy of penalty under section 73 of the CGST Act in case of delayed filing of return

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

Clarification: As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act 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 of the CGST Act may be imposed after following the due process of law.

[Circular No. 76/50/2018-GST, dated 31.12.2018]

31.6 General provisions relating to determination of tax [Section 75 of the CGST Act, 2017]

- (1) **Period of Stay:** Period of stay on issuance of SCN ordered by Court or Tribunal to be excluded for determining limitation (i.e. 3 years or 5 years).
 - (2) **Deemed Notice:** Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 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 proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.
 - (3) **Order issued in pursuance of the Court:** 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 **two years** from the date of communication of the said direction.
 - (4) **Opportunity of hearing:** 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.
 - (5) **Adjournment not more than 3 times:** 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:
Provided that no such adjournment shall be granted for more than **three times** to a person during the proceedings.
 - (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
 - (7) **Order should not be passed more than the demand mentioned in SCN:** The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
 - (8) **Court findings final:** 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.
 - (9) **Interest mandatory:** The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
 - (10) **Time barred Orders:** The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.
- 1) 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 Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

- (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 (i.e. recovery of tax from various modes).
- (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Important points:

- (a) A summary of demand has to be furnished electronically in Form GST DRC-01 along with SCN simultaneously. In case of extended period a summary of demand has to be furnished electronically in Form GST DRC-02.
- (b) the assessee will reply/make representation against SCN in Form GST DRC-06 within the prescribed time or time as extended.
- (c) A summary of the order issued shall be uploaded electronically in Form GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. This order shall be treated as Recovery Notice.
- (d) Cross empowerment between CGST and SGST/UTGST officers has been done so as to ensure that if a proper officer of one Act (say CGST Act, 2017) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.

self-assessed tax to include tax payable on outward supplies furnished in GSTR-1 but not included in return under Section 39 of the CGST Act, 2017:

General provisions relating to determination of tax section 75, An explanation has been inserted in sub-section (12) of section 75 of the CGST Act to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37 (output tax liability GSTR-1), but not included in the return furnished under section 39 (payment of tax GSTR-3B).

Example 1: a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR_1 or GSTR-3B.

Example 2: 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 GSTR-3B of said tax period; details may now be reported in the GSTR-1 of the current tax period.

Therefore, in case of mis-match between GSTR-1 and 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 627prescribed 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 (instruction No. 01/2022-GST, dated 07/01/2022).

31.7 Tax collected but not paid to Government [Section 76 of the CGST Act, 2017]

Every person who has collected any amount as representing the GST and has not paid same to the Government, is required to pay said amount with interest, irrespective of whether the supplies in respect of which such amount was collected are taxable or not (as per section 76(1) of the CGST Act, 2017).

In case of failure, proper officer can issue a SCN to him proposing recovery and imposition of penalty equalent to the amount specified in the notice (as per section 76(2) of the CGST Act, 2017)

As per section 76(3) of the CGST Act, 2017, the proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

As per section 76(4) of the CGST Act, 2017, the person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay **interest** thereon at the rate specified under section 50 *from the date such amount was collected by him to the date such amount is paid by him to the Government.*

As per section 76(5) of the CGST Act, 2017, an opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

As per section 76(6) of the CGST Act, 2017, the proper officer shall issue an order within **one year** from the date of issue of the notice and such order issued in Form GST DRC-07. This order shall be treated as Recovery Notice.

As per section 76(7) of the CGST Act, 2017, where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of **one year**.

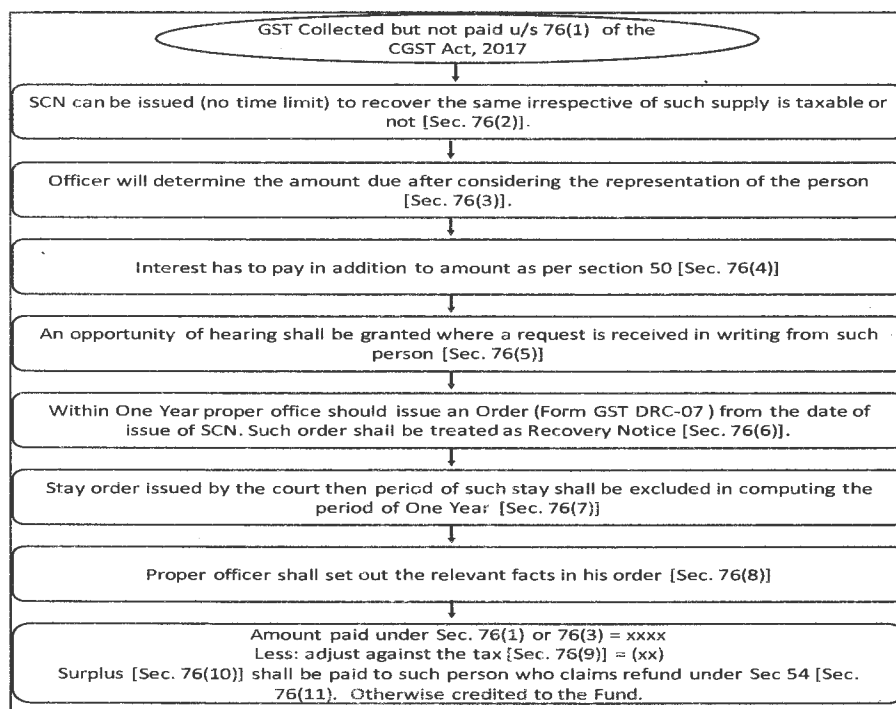
As per section 76(8) of the CGST Act, 2017, the proper officer, in his order, shall set out the relevant facts and the basis of his decision.

As per section 76(9) of the CGST Act, 2017, 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).

As per section 76(10) of the CGST Act, 2017, where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

As per section 76(11) of the CGST Act, 2017, 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.

Summary:



31.8 Tax wrongly collected and paid to Central Government or State Government [Section 77 of the CGST Act, 2017]

- (1) In case of wrong charging and deposit of tax considering it to be intra-State supply which is later found to be inter-State supply, the tax paid shall be refunded.
- (2) However, in case of payment of tax considering the supply as inter-State which is later found to be intra-State supply, no interest shall be payable on the amount of Central and State/UT tax paid.

31.9 Initiation of recovery proceedings [Section 78 of the CGST Act, 2017]

The adjudication order passed by proper officer in pursuant to demand SCN is to be treated as recovery notice.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of **three months** from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that 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 three months as may be specified by him.

31.10 Recovery of Tax [Section 79 of the CGST Act, 2017]

(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:—

- (a) **Recovery by deducting from any money owed:** 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 which may be under the control of the proper officer or such other specified officer. For this purpose, the proper officer shall issue Form GST DRC-09.
- (b) **Recovery by sale of goods under the control of proper officer:** The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer. The sale will be by auction including e-auction by issuing a notice in Form GST DRC-10.
Perishable or hazardous goods can be auctioned immediately, but in other cases a 15 days notice is required. The successful bidder will be informed in Form GST DRC-11 requiring him to make the payment within a period of 15 days from the date of auction. On payment of full bid amount, the proper officer shall transfer the possession of the said goods by issuing a certificate in Form GST DRC-12.
- (c) **Recovery from a third person:**
 - (i) the proper officer may, by a notice in writing, require any 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 Government either forthwith upon the money becoming due or being held, or 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;
 - (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, 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;
 - (iii) in case the person to whom a notice under sub-clause (i) has been issued, 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;
 - (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
 - (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and 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;
 - (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) 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;
 - (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or 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 or be held for or 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;

Recovery of defaulted money can be undertaken from such third person by issuing him a notice in Form GST DRC-13 directing him to deposit the amount specified in the notice. On payment by such person, the proper officer shall issue a certificate in Form GST DRC-14 indicating the details of the liability so discharged.

- (d) **Recovery by sale of movable or immovable property:** The proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of **30 days** next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person. The Proper Officer shall issue an order of attachment or distraint and a notice for sale in Form GST DRC-16.
- (e) **Recovery through land revenue authority:** The proper officer may prepare a certificate 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;
- (f) **Recovery through Court:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.
- (2) 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.
- (3) 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.
- (4) 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.

Explanation: w.e.f. 1-2-2019 For the purposes of this section, the word “person” shall include “distinct person” as referred to in sub-section (4) or, as the case may be, sub-section (5) of Section 25 of CGST Act, 2017.

Thus, recovery of taxes under GST law can now be made from distinct persons present in different States/ UTs also.

31.11 Recovery in installments [Section 80 of the CGST Act, 2017]

- Commissioner can allow payment with interest by defaulter in monthly installments not exceeding 24 installments.
- In case of default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due.
- For seeking installment facility, taxable person can file application electronically in Form GST DRC-20.

The installment facility will not be allowed if:

- The taxable person has already defaulted on the payment of any amount under GST law and recovery process is already undergoing;
- The taxable person has not been allowed to make payment in installments in the preceding financial year under GST law; and
- The amount for which instalment facility is sought is **less than ₹25,000/-**.

31.12 Transfer of property to be void in certain cases [Section 81 of the CGST Act, 2017]

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:

Creation of any charge on any property belonging to defaulter, after tax has become due from him, shall be void.

Provided that, 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.

31.13 Tax to be first charge on property [Section 82 of the CGST Act, 2017]

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.

31.14 Provisional attachment to protect revenue in certain cases [Section 83 of the CGST Act, 2017]

(1) Where assessment or adjudication are pending under

- Section 62 Assessment of non-filers of returns;
- Section 63 assessment of unregistered persons;
- Section 64 summary assessment in certain special cases;
- Section 73 determination of tax not paid other than fraud;
- Section 74 determination of tax not paid by reason of fraud;

The Commissioner for protecting the interest of the Government revenue, by order in writing in Form GST DRC-22 can attach provisionally any property, including bank account, belonging to the taxable person.

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

As per CBIC Letter F. No. CBEC-20/16/05/2021-GST/359, dated 23-2-2021 - Guidelines:**1. Grounds for provisional attachment of property**

- (a) Commissioner must exercise due diligence and duly consider as well as carefully examine all the facts of the case, including the nature of offence, amount of revenue involved, established nature of the business, and extent of investment in capital assets before attaching the property.
- (b) Commissioner must have reasons to believe that the taxable person may dispose of or remove the property if not attached provisionally.
- (c) Commissioner should duly record the 'reasons to believe' on file.
- (d) CBIC has directed that the power of provisional attachment must not be exercised in a routine/mechanical manner and should be based on careful examination of all the facts of the case. It has been mandated that the collective evidence, based on the proceedings/ enquiry conducted in the case, must indicate that prima-facie a case has been made out against the taxpayer, before going ahead with any provisional attachment.
- (e) As the provisional attachment of property may affect the working capital of the taxable person, the investigation and adjudication should be completed at the earliest.

2. Cases fit for provisional attachment of property

Provisional attachment should not be invoked in cases of technical nature and should be resorted to mainly in cases where there is an evasion of tax or where the wrongful input tax credit ("ITC") is availed or utilized or wrongfully passed on. Provisional attachment can be resorted to in following cases (illustrative list):

- (a) Where taxable person has supplied any goods or services without issue of any invoice with an intention to evade tax; or
- (b) Where taxable person has issued any invoice without supply; or
- (c) Where taxable person has availed ITC using the invoice or bill issued without any corresponding supply or fraudulently availed ITC without any invoice; or
- (d) Where taxable person has collected any amount as tax but has failed to pay the same to the Government beyond a period of 3 months; or
- (e) Where taxable person has fraudulently obtained refund; or
- (f) Where taxable person has passed on ITC fraudulently to the recipient(s) but has not paid the commensurate tax.

3. Procedure for provisional attachment of property

- (a) Commissioner should duly record the 'reasons to believe' on file and pass an order in Form GST DRC-22 with proper Document Identification Number ("DIN") recording the details of property being attached.
- (b) Copy of order in Form GST DRC-22 to be sent to the concerned revenue authority/transport authority/bank or the relevant authority to place encumbrance on the attached property. The property, thus attached, shall be removed only on the written instructions from the Commissioner.
- (c) Copy of such attachment order shall be provided to the taxable person as early as possible so that objections, if any, to the said attachment can be made by the taxable person within 7 days.
- (d) If such objection is filed by the taxable person, Commissioner should provide an opportunity of being heard. After considering the facts presented by the person in his written objection as well as during the

personal hearing, if any, the Commissioner should form a reasoned view whether the property is still required to be continued to be attached or not, and pass an order in writing.

- (e) In case, the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC- 23.
- (f) Even in cases where objection is not filed within the time prescribed under Rule 159(5) of CGST Rules i.e. 7 days, the Commissioner should pass a reasoned order.
- (g) Each such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order of attachment.
- (h) In case the attached property is of perishable/hazardous nature, then such property shall be released to the taxable person by issuing order in FORM GST DRC-23, after taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, and submits proof of payment.
- (i) In case the taxable person fails to pay the said amount, then the perishable/hazardous property may be disposed of and the amount recovered from such disposal of property shall be adjustable against the tax, interest, penalty, fee or any other amount payable by the taxable person.
- (j) Further, the sale proceeds thus obtained must be deposited in the nearest Government Treasury or branch of any nationalised bank in fixed deposit and the receipt thereof must be retained for record, so that the same can be adjusted against the amount determined to be recoverable from the said taxable person.

4. Types of property that can be attached

- (a) Value of property attached should not be excessive and should be reasonable to the estimated amount of pending revenue. More than one property can be attached.
- (b) Provisional attachment can be made only of the property belonging to the taxable person, against whom the proceedings under Section 83 of the Act are pending.
- (c) Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.
- (d) As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs required for production or finished goods should not normally be attached by the Department.
- (e) In cases where the movable property, including bank account, belonging to a taxable person has been attached, such movable property may be released if taxable person offers any other immovable property which is sufficient to protect the interest of revenue.

5. Attachment period:

- (a) Every provisional attachment shall cease to have effect after the expiry of a period of ONE Year from the date of the provisional attachment order.
- (b) Besides, the provisional attachment order shall also cease to have effect if an order in Form GST DRC-23 for release of such property is made by the Commissioner.

6. Investigation and Adjudication:

- (a) The investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of tax as well as interest, penalty etc., arising upon adjudication can be recovered from the said taxable person and the purpose of attachment is achieved.
- (b) Where the property to be provisionally attached consists of the share or interest of the concerned taxable person in property belonging to him and another as co-owners, the provisional attachment shall be made by order to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

7. Property exempt from attachment:

Amendment of section 83 Provisional Attachment as per Finance Act, 2021 (w.e.f. 1-1-2022):

In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Where, after the initiation of any proceeding under Chapter XII (Advance Ruling), Chapter XIV (i.e. Transitional Provisions) or Chapter XV (i.e. Anti-Profiteering), 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.

Vide this Modification Powers of Provisional attachment of the Commissioner have been extended to proceeding under Chapter XII (Assessment), XIV (Inspection, Search, Seizure and Arrest) or XV (Demands and Recovery) for

attachment of property including bank account belonging to the taxable person / person who has retained benefits of offences under 122(1A) e.g Fake Invoice Transactions, where he feels that provisional attachment is necessary to protect the Interest of the Revenue.

Further, earlier the person whose property is attached could file an objection to such attachment within 7 days of the attachment. However, said provision has been amended by aforesaid notification to provide that the objections to such attachment can be filed at any time. Further, amendment in rule 159 of the CGST Rules, 2017 is also effective from 1-1-2022. Further, 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.

All such property as is by the Code of Civil Procedure, 1908 exempt from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment.

Assessment of non-filers of returns (Section 62)

Example 1: Whether, The CGST Act, 2017 provides for assessment in case of registered taxable person who does not furnish returns under Section 39 and 45?

Ans. In terms of Section 62(1) of the CGST Act, 2017, the proper officer is empowered to assess the tax liability on such registered taxable person to the best of his judgment taking into account all the relevant materials which is available, or which is gathered and issue an assessment order in **FORM GST ASMT-13** within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates. (Section 62(1) read with Rule 100(1) of the CGST Rules)

Example 2: Is there any additional opportunity provided for taxable person to submit a return even after passing an assessment order under section 62(1)?

Ans. Yes, if the registered person furnishes a valid return within thirty days from the date of service of best judgment assessment order under Section 62(1), the said assessment order shall be deemed to have been withdrawn. (Sub-section 2)

Example 3: Whether the registered person will get immunity from interest & late fee leviable if assessment order passed under Section 60(1) is withdrawn?

Ans. No, registered person will still be liable for interest under section 50(1) and late fee under Section 47 of CGST Act. (Sub-section 2)

Standard operating procedure to be followed in case of non-filers of returns

[Circular No. 129/48/2019-GST, dated 24.12.2019]

Section 46 of the CGST Act read with rule 68 of the CGST Rules requires issuance of a notice to a registered person who fails to furnish return under section 39 or section 44 or section 45 of the CGST Act requiring him to furnish such return within 15 days. Further, section 62 of the CGST Act provides for assessment of non-filers who fail to file return under section 39 or section 45 even after service of notice under section 46. No separate notice is required to be issued for best judgment assessment under section 62 if the return is not filed within 15 days of issuance of notice under section 46.

CBIC has issued the following guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns:

- (i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.
- (ii) Once the due date for furnishing return under section 39 is over, a system generated mail/message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.
- (iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring them to furnish return within 15 days.
- (iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter under section 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.
- (v) For the purpose of assessment of tax liability under section 62, the proper officer may take into account the following:
 - Details of outward supplies available in GSTR-1
 - Details of inward supplies auto-populated in GSTR-2A
 - Information available from e-way bills

- Any other information available from any other source including inspection under section 71 of the CGST Act
- (vi) If the defaulter furnishes a valid return within 30 days of the service of assessment order under section 62, the said assessment will be deemed to have been withdrawn.
- (vii) If the said return remains unfurnished within the statutory period of 30 days from the service of assessment order under section 62, the proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

Assessment of unregistered persons (Section 63)

Example 1: Whether, The CGST Act, 2017 provides for assessment of taxes on the unregistered taxable person who fails to take registration even though liable to do so? What will be the procedure of such assessment?

Ans. If a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under section 29(2) but who was liable to pay tax, the proper officer may assess the tax liability to the best of his judgement after providing opportunity of being heard to such person.

The proper officer shall issue a notice to a taxable person in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis.

The registered person will be allowed a time of fifteen days to furnish his reply.

Example 2: What is the Time limit for passing the assessment order on the unregistered person?

Ans. The proper officer, in relation to assessment of taxes on the unregistered taxable person, shall issue the assessment order in **FORM GST ASMT-15** within 5 years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

31.15 Continuation and validation of certain recovery proceedings [Section 84 of the CGST Act, 2017]

If adjudicated dues are enhanced or reduced in appeal, revision or other proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal etc. will continue. The order for the reduction or enhancement of any demand under Section 84 shall be issued in Form GST DRC-25.