



# DEMAND AND RECOVERY UNDER MODEL GST ACT (NOVEMBER 2016)

*Indirect Taxes Committee*

*The Institute of Chartered Accountants of India*



# WHEN DOES DEMAND ARISE

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION (Sec.66)**

- A) Tax Not paid
- B) Tax short paid
- C) erroneous refund
- D) ITC wrongly availed
- E) ITC wrongly utilised

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION (Sec.67)**

- A) Tax Not paid
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- E) ITC wrongly utilised



# SCN – TIME LIMIT

**OTHER THAN BY REASON OF  
FRAUD, WILFUL MISSTATEMENT  
OF FACTS, SUPPRESSION  
[Sec.66(2)]**

Three months prior to expiry of  
time for issuance of assessment  
order

**BY REASON OF FRAUD, WILFUL  
MISSTATEMENT OF FACTS,  
SUPPRESSION [Sec.67(2)]**

Six months prior to expiry of  
time for issuance of assessment  
order



# ASSESSMENT ORDER – TIME LIMIT

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION**  
**[Sec.66(8)]**

**Three years** from due date of filing the annual return for the year in which one or more of above circumstances occurred

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.67(8)]**

**Five years** from due date of filing the annual return for the year in which one or more of above circumstances occurred



**TIME LIMIT PRESCRIBED IN [SECTION  
66(2) &(8) AND 67(2) &(8)]-  
EXTENDABLE?  
SEC.68(1)**

Period of Stay granted by Court to exclude time limit  
prescribed for Notice and order



# TIME LIMIT PRESCRIBED IN [SECTION 66(8) & 67(8)]- EXTENDABLE? SEC.68(11)

LOWER AUTHORITY PASSING ORDER PREJUDICIAL TO REVENUE	DEPARTMENTAL APPEAL TO HIGHER AUTHORITY	TIME PERIOD TO BE EXCLUDED IF SCN ISSUED
First Appellate authority	Tribunal	Date of order of F.A.A. to date of order of Tribunal.
Tribunal	High court	Date of order of Tribunal to date of order of High court.
High Court	Supreme Court	Date of order of High Court to date of order Supreme Court.



# SCN & ADDITIONAL STATEMENT

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION**  
**[Sec.66(3)]**

SCN can be accompanied by Additional statement covering other periods, provided the issue and grounds relied upon in SCN and additional statement are identical

Additional statement deemed as SCN

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.67(3)]**

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Additional statement deemed as SCN



# SCN & ADDITIONAL STATEMENT- CONTENTS

**OTHER THAN BY REASON OF  
FRAUD, WILFUL MISSTATEMENT  
OF FACTS, SUPPRESSION**  
[Sec.66(1)}

Proposal to levy:

Tax

Interest u/s.45

Penalty leviable (% not  
specified)

**BY REASON OF FRAUD, WILFUL  
MISSTATEMENT OF FACTS,  
SUPPRESSION [Sec.67(1)]**

Proposal to levy:

Tax

Interest u/s.45

100% Penalty



# PAYMENT MADE BEFORE ISSUANCE OF SCN ON OWN OR OFFICER'S ASCERTAINMENT - POSITION

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION**  
**[Sec.66(4)&(5)]**

PAYMENT OF TAX WITH INTEREST U/S.45:

If payment of acceptable, no further SCN and no penalty

If payment of tax and interest is short paid, SCN for the balance amount with penalty proposal

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.67(4)&(5)]**

PAYMENT OF TAX WITH INTEREST U/S.45 ALONG WITH 15% PENALTY:

If payment acceptable, no further SCN and no penalty

If payment of tax and interest is short paid, SCN for the balance amount with penalty proposal



# PAYMENT MADE AFTER ISSUANCE OF SCN - POSITION

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.66(6)]**

PAYMENT OF TAX WITH INTEREST U/S.45 WITHIN 30 DAYS OF ISSUANCE OF SCN:

- A) No penalty leviable
- B) all proceedings deemed to be concluded

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.67(6)]**

PAYMENT OF TAX WITH INTEREST U/S.45 ALONG WITH 25% PENALTY WITHIN 30 DAYS OF ISSUANCE OF SCN:

All proceedings deemed to be concluded



# LEVY OF PENALTY ON CONCLUSION OF ADJUDICATION

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION Sec. 66(7)**

Levy of penalty @10% of the tax determined OR Rs.10,000/- whichever is higher

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.67(7)]**

Levy of penalty ,if SCN proposal is implemented, is 100%



# PAYMENT MADE AFTER SERVICE OF ASSESSMENT ORDER

**OTHER THAN BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION**

NO SUCH PROVISION

**BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION [Sec.67(9)]**

**PAYMENT OF TAX WITH INTEREST U/S.45 ALONG WITH 50% PENALTY WITHIN 30 DAYS OF COMMUNICATION OF ORDER:**

All proceedings deemed to be concluded



# “ ALL PROCEEDINGS IN RESPECT OF THE SAID NOTICE”

Explanation 1 to Section 68:

Includes proceedings under Chapter XX:

- Prosecution and compounding of offences



# BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION

“SUPPRESSION”: Explanation to Section 67:

(a) Non declaration of facts, information which a taxable person is statutorily required to declare in the returns, statement, report, or any other document under the Act or Rules

(b) failure to furnish information on being asked for in writing by the proper officer

**IMPORTANT: Mens rea: not a criterion to establish suppression**



# BY REASON OF FRAUD, WILFUL MISSTATEMENT OF FACTS, SUPPRESSION

“FRAUD”:

*Suppressio Veri Suggestio Falsi*

“ WILFUL MIS-STATEMENT OF FACTS”:

Intention to suppress facts

Intentionally stating wrong facts

*MENS REA ESSENTIAL*



# SCN- PERSONAL HEARING

## Section 66(7) & 67(7):

Order can be passed on a representation, if any

## Section 68(4):

PH to be granted :

(i) On a written request by person chargeable with tax & penalty

OR

(ii) When adverse order is passed



# SCN- PERSONAL HEARING

Adjournment to be granted on showing sufficient cause  
and to be recorded in writing

Adjournment to be restricted to three times



## SET ASIDE AND REMAND- CONSEQUENCE SEC.68(2)&(3)

**When order made under Section 67(8) SET ASIDE and REMANDED by Appellate Authority/ Court/ Tribunal that fraud/ wilful mis-statement of facts/suppression has not been established:**

Proper officer to determine the tax as if the notice has been issued u/s. 66(1) or (3);

Order to be passed within 2 years from communication of remand order



# **MODIFICATION- CONSEQUENCE SEC.68(8)&(9)**

**When tax amount is modified by AA, Tribunal or Court:**

**Interest amount and penalty amount would stand modified;**

**Interest on amount short paid/not paid would become payable even if not specified in order**



# OTHER GENERAL PROVISIONS- SECTION 68

A) Adjudication proceedings to be detailed in factual aspects and reasoned [ 68(6)]

B) Tax , interest or penalty demanded in Order/adjudication not to exceed corresponding amounts specified in SCN

C) Order to be confirmed on same grounds as SCN [68(7)]

D) Adjudication deemed to be concluded if no order is passed within 3 years [66(8)] OR within 5 years [67(8)] SUBJECT to extension of time limit provided in Section 68(1) or 68(11)- [ 68(10)]



## OTHER GENERAL PROVISIONS- SECTION 68

E) If any self assessed tax or interest remains unpaid, it is recoverable under Section 72 [68(12)]

F) Proceedings against co-noticees deemed to be concluded when proceedings against main noticee concluded [ Explanation 2]

G) Penalty levied under Section 66 or 67 bars penalty under any other provision in the Act [ 68(13)]



# TAX COLLECTED BUT NOT DEPOSITED – SUPPLIER LIABLE (SEC.69)

## NON- OBSTANTE CLAUSE:

- Notwithstanding anything in AA / Tribunal/Court order or direction
- Notwithstanding any other provision
- Every person who has collected tax and not paid Shall forthwith deposit the amount to Central/State Treasury
- Whether or Not the corresponding supplies are taxable or not



# TAX COLLECTED BUT NOT DEPOSITED – SUPPLIER LIABLE (SEC.69)

- SCN to be issued to such person
- Speaking order to be passed after considering representation and PH if sought for
- Interest payable from date of collection till date of payment
- Order to be issued within 1 year from date of issue of notice
- Stay period to be excluded for calculation of above time limit



# TAX COLLECTED BUT NOT DEPOSITED – SUPPLIER LIABLE( SEC.69)

Amount paid to be adjusted against the tax payable in respect of the supplies

Surplus to be credited to Fund OR to be refunded to the person who has borne the incidence of the amount

Person who has borne the incidence of the amount may apply for refund within six months of the date of public notice



# TAX WRONGFULLY COLLECTED AND DEPOSITED – SEC.70

## When taxable person considers a transaction as an intra-State and pays CGST/SGST:

Later held to be an inter-State transaction

Refund to be granted

Later to be paid in such manner and subject to such conditions

## When taxable person considers a transaction as an inter-State and pays IGST:

Later held to be an intra-State transaction

No interest to be paid on the CGST/SGST payable



# INITIATION OF RECOVERY PROCEEDINGS- SEC.71

Subsequent to Adjudication:

Amount determined payable within 90 days of service of order

90 day time limit can be shortened by Officer in the interests of Revenue, for reasons to be recorded in writing



**THANK YOU**



**For any Clarification, Please Contact**

**Indirect Taxes Committee of ICAI**

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**or <https://www.youtube.com/indirecttaxcommittee>**