

Chapter XV

Demands and Recovery

Subject to the provisions of IGST/UTGST Act and the rules made thereunder, the provisions relating to demand and recovery of CGST Act made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017 respectively

FAQ's

Q1. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts (Section 73) Who has the power to issue a notice/ order under Section 73 and 74?

Ans. "Proper officer" as defined under Sec 2(91) of the Act and assigned *vide Circular No. 31/05/2018-GST dated 09.02.2018* to exercise powers under Sections 73 and 74 can issue notices and orders under the said Sections.

Q2. Under what circumstances, the proper officer shall invoke provisions of section 73(1) to serve show cause notice on the person chargeable with tax?

Ans. The proper officer shall serve notice under the provisions of Section 73(1) along with a summary, electronically in **Form GST DRC-01** (as per Chapter XVIII-Demands and Recovery of the CGST Rules) on the person chargeable with tax for any reason other than:

- fraud
- willful misstatement
- suppression of facts,

when he has reasons to believe that tax has not been paid or short paid or erroneously refunded or input tax credit has been wrongly availed or utilized.

Q3. What is the time limit for issue of show cause notice by the proper officer under section 73(2)?

Ans. The proper officer shall issue show cause notice at least 3 months prior to the time limit of 3 years for issuance of order i.e.

- Before completion of 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 utilized relates to, or

- within 3 years from the date of erroneous refund, as the case may be.
- Q4. Whether proper officer can issue similar show cause notice for any periods other than those covered under section 73(1)?
- Ans. Yes, it can be issued for subsequent periods on same grounds raised in the show cause notice. The proper officer may serve a statement under section 73(3) along with a summary electronically in **Form GST DRC-02** containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized where the grounds relied upon by the proper officer for such periods are the same as are mentioned in the earlier notice issued under section 73(1). The service of such statement shall be deemed to be service of show cause notice on the person chargeable with tax.
- Q5. Can the person chargeable with tax pay the amount of demand along with interest before the service of show cause notice under sub-section 73(1) or statement under section 73(3)?
- Ans. Yes. The person chargeable with tax can pay the amount of tax along with interest under section 50 based on 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 in **Form GST DRC-03**. On receipt of such information, the proper officer shall issue an acknowledgement for accepting the payment made by the said person in **Form GST DRC-04** and shall not serve any notice or statement with respect to the tax so paid.
- Q6. Whether the proper officer can proceed to issue show cause notice in case of any shortfall in payment under section 73(5) by the person chargeable with tax?
- Ans. Where the proper officer is of the opinion that the amount paid under section 73(5) falls short of the actual amount payable, he shall proceed to issue show cause notice under section 73(1) for such shortfall.
- Q7. If the show cause notice is issued under section 73(1) or 73(3) and thereafter the person chargeable with tax makes payment, is there any need to adjudicate the case?
- Ans. No. Where the person chargeable with tax pays the tax along with interest under section 50 within 30 days of issue of such show cause notice, no penalty shall be payable. The person chargeable with tax shall inform 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. Please note that on such payment, all proceedings in respect of such notice except for proceedings under section 132 shall be deemed to be concluded.
- Q8. What is the maximum penalty leviable under section 73?

Ans. Penalty equivalent to 10% of the tax or ₹10,000/- whichever is higher.

Q9. What is the time limit for issue of order under section 73 (9) of the CGST Act?

Ans. The proper officer after considering the representation in **FORM GST DRC-06**, if any, made by the person chargeable with tax and determined the amount of tax, interest and penalty due from such person and issue an order along with, a summary of such order which 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.

The proper officer shall pass such order within a period of 3 years from the due date for filing of annual return for the financial year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates or within 3 years from date of erroneous refund.

Q10. Whether any penalty is payable, if the self-assessed tax or any amount collected as tax is not remitted?

Ans. Yes. Penalty shall be leviable under section 73(11), where the self-assessed tax or any amount collected as tax is not paid within 30 days from the due date of payment of such tax. Quantum of penalty leviable shall be 10% of the tax or ₹ 10,000/-, whichever is higher.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts (section 74)

Q11. Under what circumstances, the proper officer shall invoke provisions of section 74(1) to serve show cause notice on the person chargeable with tax?

Ans. The proper officer shall serve notice under the provisions of Section 74(1) along with a summary electronically in **Form GST DRC-01** on the person chargeable with tax for any reason of :

- Fraud
- willful misstatement
- suppression of facts

when he has reasons to believe that tax has not been paid or short paid or erroneously refunded or input tax credit has been wrongly availed or utilized.

Q12. What is the time limit for issue of show cause notice by the proper officer under section 74(2)?

Ans. The proper officer shall issue show cause notice at least 6 months prior to the time limit of 5 years for issuance of order i.e.:

- Before completion 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 wrongly availed or utilized relates to or
 - within 5 years from the date of erroneous refund, as the case may be.
- Q13. Whether proper officer can issue similar show cause notice for any periods other than those covered under section 74(1)?
- Ans. Yes, it can be issued for subsequent periods on same grounds raised in the show cause notice. The proper officer may serve a statement under section 74(3) along with a summary electronically in **Form GST DRC-02** containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized, where the grounds relied upon by the proper officer for periods other than those covered in Section 74(1) are the same as are mentioned in the earlier notice issued under section 73 (1), except the ground of fraud or any willful-misstatement or suppression of facts with the intention to evade tax. The service of such statement [under Section 74(3)] shall be deemed to be service of show cause notice [under Section 73(1)] on the person chargeable with tax.
- Q14. Can the person chargeable with tax pay the amount of demand along with interest and reduced penalty before the service of show cause notice under section 74(1) or as the case may be, the statement under section 74(3)?
- Ans. Yes. The person chargeable with tax can pay the amount of tax along with interest under section 50 and a penalty equivalent to 15% of such tax based on 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 in **Form GST DRC-03**. On receipt of such information, the proper officer shall issue an acknowledgement for accepting the payment made by the said person in **Form GST DRC-04** and he shall not serve any notice in respect of tax so paid or any penalty payable under the provisions of this Act or rules made thereunder.
- Q15. Can the person chargeable with tax pay the amount of demand along with interest and reduced penalty after the issue of notice under section 74(1) or 74(3) , but before the adjudication and issue of order under section 74?
- Ans. Yes. The person chargeable with tax under section 74(1) or the statement under section 74(3) can pay the amount of tax along with interest under section 50 and a penalty equivalent to 25% of such tax within 30 days from the issue of notice [Section 74(8)]. The person chargeable with tax shall inform 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. Please note that on such payment, all proceedings in respect of the said notice except for proceedings under section 132 shall be deemed to be concluded.

Q16. Where a case is adjudicated under section 74 and order issued confirming tax demand and penalty, does the Noticee have any option to pay reduced penalty?

Ans. Yes. The person served with order under section 74(9) along with a summary electronically in Form **GST DRC-07**, shall pay the tax along with interest under section 50 and a penalty equivalent to 50% of such tax within 30 days of the communication of the order [Section 74(11)]. On such payment, all proceedings in respect of the said notice except for proceedings under section 132 shall be deemed to be concluded.

Q17. Whether the proper officer can proceed to issue notice in case of shortfall in payment under section 74(5) by the person chargeable with tax?

Ans. Where the proper officer is of the opinion that the amount paid under section 74(5) falls short of the actual amount payable, he shall proceed to issue show cause notice under section 74(1) for such shortfall.

Q18. If the show cause notice is issued under section 74(1) or 74(3) and thereafter the person chargeable with tax makes payment, is there any need to adjudicate the case?

Ans. No. Where the person chargeable with tax, pays the tax along with interest under section 50 and applicable penalty within 30 days of communication of the order, all proceedings in respect of such notice except for proceedings under section 132 shall be deemed to be concluded.

Q19. What is the maximum penalty leviable under section 74?

Ans. Penalty equivalent to 100% of the tax.

Q20. What is the time limit for issue of order under section 74 (9) of the CGST Act?

Ans. The proper officer after considering the representation in **FORM GST DRC-06**, if any, made by the person chargeable with tax and determined the amount of tax, interest and penalty due from such person and issue an order along with, a summary of such order which shall be uploaded electronically in **FORM GST DRC-07**.

The proper officer shall pass such order within a period of 5 years from the due date for filing of annual return for the financial year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates or within 5 years from the date of erroneous refund.

Q21. What is 'Suppression'?

Ans. The term 'Suppression' means 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 the Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing by the proper officer.

Q22. Where the show cause notice is issued to main person liable to pay tax and some other persons under the same proceedings, what will happen to penalty proceedings initiated against other persons on conclusion of proceedings against the main person under section 73 or 74?

Ans. The penalty proceedings against all other persons under sections 122, 125, 129 and 130 are deemed to be concluded on conclusion of proceedings against the main person liable to pay tax.

Q23. What is the prescribed monetary limit for different levels of officers for issuance of show cause notices and orders under Section 73 and 74?

Ans. As per *Circular No. 31/05/2018-GST dated 9.02.2018*, the monetary limit prescribed for different levels of officers for issuance of show cause notices and orders under Section 73 and 74 is as below:

Officer of Central Tax	Monetary limit of the amount of tax (including cess) not paid or short paid or erroneously refunded or input tax credit of respective taxes wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act /section 20 of IGST Act.		
	Central tax	Integrated tax	Central tax and integrated tax
Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rupees 1 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crores	Above Rupees 20 lakhs and not exceeding Rupees 2 crores
Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

General provisions relating to determination of tax (Section 75)

Q24. Where the service of Notice or issuance of order is stayed by an order of a Court or Appellate Tribunal, can the period of such stay be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or and sub-sections (2) and (10) of section 74?

Ans. Yes. The period of stay would be excluded for the computing the time limit for issuance of show cause notice or order under Section 73 and Section 74.

- Q25. What happens when the Notice issued under Section 74(1) is held not sustainable by any Appellate Authority or Tribunal or Court for the reason that the charges of fraud or any willful misstatement or suppression of facts to evade tax has not been established?
- Ans. The proper officer shall determine the tax payable by such person deeming as if the Notice were issued under section 73(1).
- Q26. Whether notice for a period of 5 years is valid even if charge of suppression, fraud and misstatement are not sustained?
- Ans. No, when the allegations of fraud, suppression or misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years' time would be applicable for date of issue of order.
- Q27. What is the time limit for issue of order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court?
- Ans. The order shall be issued within 2 years from the date of communication of the said direction.
- Q28. Whether opportunity of personal hearing shall be granted to the person chargeable with tax or penalty or any adverse decision without any written request during adjudication proceedings?
- Ans. No. An opportunity of personal hearing shall be granted, only if a request is made in writing.
- Q29. How many times adjournments can be sought by the person chargeable with tax during the proceedings?
- Ans. If sufficient cause is shown by the person chargeable with tax, the proper officer shall grant time and adjourn the hearing on recording reasons in writing. However, the proper officer shall have the power to grant maximum 3 adjournments during the proceedings.
- Q30. Whether the amount of tax, interest and penalty demanded in the order can exceed the amount specified in the Notice?
- Ans. No. 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.
- Q31. What happens in cases where Notice is issued but order has not been passed within 3 years (Section 73) or 5 years (Section 74)?
- Ans. The adjudication proceedings shall be deemed to be concluded if the order is not issued within the limitation period of 3 years under section 73(10) or 5 years under section 74(10), as the case may be.

Q32. How to compute period of limitation referred to in section 73(10) or section 74(10) where 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 the revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision is pending?

Ans. While computing the period of limitation referred to in section 73(10) or section 74(10), the period spent between the date of the decision of the Appellate Authority / Appellate Tribunal / High Court and the date of the decision of the Appellate Tribunal / the High Court / the Supreme Court as the case may be, shall be excluded.

Q33. Whether penalties under any other provisions of the Act be imposed in respect of adjudication proceedings under section 73 or 74?

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

Q34. Whether interest is payable on the tax short paid or not paid even if, it is not specified in the order determining the tax liability?

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

Q35. While filing the return under GST, if any amount of tax or any interest on such tax remains unpaid, whether proper officer shall issue notice for recovering this amount?

Ans. No, proper officer shall not issue any notice for such unpaid tax or unpaid interest on tax. This shall be recovered from such person in accordance with provisions of Section 79.

Tax collected but not paid to Government (Section 76)

Q36. Whether any amount representing as tax is collected from any other person be retained and not paid to Government?

Ans. Every person who has collected from any other person any amount representing as tax under this Act shall forthwith pay the said amount to Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.

Q37. In case the person does not deposit tax collected in contravention of Section 76, what is the course of action available to the proper officer?

Ans. The proper officer shall issue notice requiring him to show cause as to why the amount so collected as tax 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 the Act. The proper officer shall adjudicate the matter and issue order within one year from the date of issue of the show cause notice.

Q38. In case the person does not deposit tax collected in contravention of Section 76, is the same recoverable with interest?

Ans. Yes. In addition to the amount payable by him, the person is required to pay interest under Section 50 on the same from the date of collection of the amount till the date such amount is paid to the Government.

Q39. Is there any time limit for issue of notice under section 76 in cases where tax collected but not paid to Government?

Ans. No. Notice can be issued on detection of such cases without any time limit. Once show cause notice is issued, the proper officer shall pass the order within 1 year from the date of issue of such notice.

Q40. Whether the period of stay shall be excluded in computing the period of one year where the issuance of order is stayed by an Order of the Court or the Appellate Tribunal?

Ans. Yes. Where the issuance of Order is stayed by an order of the Court or the Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

Q41. How is the amount of surplus left after adjustment with tax payable dealt with?

Ans. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q42. Whether the person who has borne the incidence of amount apply for refund of surplus left after adjustment towards tax collected, but not paid under section 76?

Ans. Yes. 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.

Tax wrongfully collected and paid to Central Government or State Government (Section 77 of the CGST Act, 2017; Section 19 of the IGST Act, 2017 and Section 12 of the UTGST Act, 2017)

Q43. What happens if a registered person has paid CGST and SGST or, as the case may be, CGST and UTGST on a transaction considered by him to be an intra-state supply but which is subsequently held to be an inter-state supply?

Ans. Refund of CGST and SGST or, as the case may be, CGST and UTGST shall be granted in such manner and subject to such conditions as may be prescribed.

Q44. What happens if a registered person 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?

Ans. Refund of IGST (in IGST Act) shall be granted in such manner and subject to such conditions as may be prescribed.

Q45. Whether 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 is required to pay interest?

Ans. No. Such registered person shall not be required to pay any interest on the amount of CGST and SGST or CGST and UTGST payable, as the case may be.

Q46. Whether a taxable person who has paid CGST and SGST or, as the case may be, CGST and UTGST on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply is required to pay interest?

Ans. No. A registered person shall not be required to pay any interest on the amount of IGST payable.

Initiation of recovery proceedings (Section 78)

Q47. Is there any time limit for payment of tax demand in pursuance of an order passed under this Act?

Ans. Yes. The demand shall be payable by the taxable person within a period of 3 months from the date of service of the order.

Q48. What happens if the tax demand is not paid within the time limit prescribed under section 78?

Ans. The proper officer shall initiate recovery proceedings if the tax demand is not paid within 3 months from the date of service of the order.

Q49. Whether the proper officer can require a taxable person to make payment of tax demand within shorter period lesser than 3 months?

Ans. Yes. If it is expedient in the interest of the revenue, the proper officer, after recording reasons in writing, may require taxable person to make such payment within shorter period as may be prescribed by him.

Recovery of tax (Section 79 of the CGST Act, 2017 and Section 13 of the UTGST Act, 2017)

Q50. What are the modes of recovery of tax available to the proper officer?

Ans. The following options are available to the proper officer:

(a) The proper officer may deduct or may require any other specified officer in **Form GST DRC-09** to deduct the amount so payable from any money owing to such person - *Refund adjustment*.

(b) 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.

The goods shall be sold through a process of auction including e-auction, for which a notice shall be issued in **FORM GST DRC-10** clearly indicating the goods to be sold and the purpose of sale. The proper officer shall issue a notice to the successful bidder 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 the full bid amount the possession of the said goods shall be transferred to the successful bidder and issue a certificate in **FORM GST DRC-12**. –*Detaining and selling of goods.*

- (c) The proper officer may, by a notice in **Form GST DRC-13**, 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 credit of the Central or a State Government. Where the third person makes the payment of the amount specified in the notice in **FORM GST DRC-13**, then the proper officer shall issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged. – *Recovery from third parties.*
- (d) 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 in **FORM GST DRC-15** 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. -- *Recovery through execution of a decree, etc.*
- (e) The proper officer may, on an authorization by the competent authority, 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. Thereby issue an order of attachment or distraint and a notice for sale in **FORM GST DRC-16** prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due

If the due remains unpaid for a period of 30 days after any such distress, he may cause the said property to be sold. The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in **FORM GST DRC- 17** clearly indicating the property to be sold and the purpose of sale. With the proceeds of such sale, proper officer may satisfy the amount payable and the costs including cost of sale remaining unpaid and pay the surplus amount, if any, to such person – *Detaining / attachment of movable or immovable property and adjustment of tax dues from sale proceeds.*

- (f) The proper officer may prepare a certificate signed by him specifying the amount due from such person and send such certificate to the Collector of the District in **FORM GST DRC-18** in which such person owns any property or resides or carries on his business and on receipt of such certificate, the Collector shall proceed to recover from such person the amount specified as if it were an arrear of land revenue – *Recovery of tax dues as arrears of land revenue*.
- (g) Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in **FORM GST DRC-19** to recover from the defaulter, the amount specified there under as if it were a fine imposed by him -- *Recovery through Court*.

Where the Company is under liquidation, 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 **FORM GST DRC-24** -- *Recovery from Company in liquidation*.

Note: ¹For the purposes of Section 79 of the CGST Act, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

- Q51. Whether notice can be issued to post office, banking company or any insurer for recovery of amount (Recovery from third parties)?
- Ans. Yes. Proper officer may issue notice to post office, banking company or any insurer and they are required to comply with the same without insisting on production of any passbook, deposit receipt, policy or any other document.
- Q52. Whether the authorities can use more than one of the methods for the recovery proceedings?
- Ans. Yes, they can use one or more methods at the option and choice of the proper officer.
- Q53. Whether the proper officer of the State tax or Union Territory tax has the power to recover any amount of tax, interest or penalty payable and which remains unpaid to Government under CGST Act?
- Ans. Yes. During the course of recovery of tax arrears, the proper officer of the State tax or Union Territory tax may recover such amount from a taxable person as if were an arrear of State tax or Union Territory tax and credit the amount so recovered to the account of the Government.
- Q54. Whether the proper officer of the Central tax has the power to recover any amount of tax, interest or penalty payable and which remains unpaid to Government under UTGST Act?

¹ Effective date yet to be notified.

Ans. Yes. During the course of recovery of tax arrears, the proper officer of the Central tax may recover such amount from a taxable person as if were an arrear of Central tax and credit the amount so recovered to the account of the Government.

Q55. How to distribute the arrears of tax so recovered by the proper officer, if it is less than the amount due to Central Government, State Government and Union Territory?

Ans. The arrears of tax recovered by the proper officer shall be distributed to the respective Governments in proportion to the amount due to each such Government.

Payment of tax and other amount in installments (Section 80)

Q56. What are the remedies available to taxpayer after making the application to Commissioner in respect of payment of tax and other amount in instalment?

Ans. Commissioner may either extend the time limit for payment of tax or allow the taxpayer to make the payment of tax in installments.

Q57. Can the proper officer allow payment of tax dues in installments?

Ans. Yes. On receipt of application filed by a taxable person in **Form GST DRC-20**, the Commissioner, after recording reasons in writing, shall issue an order in **Form GST DRC-21** extending the time for payment or allowing payment of any amount due under the Act in monthly instalments not exceeding 24, subject to payment of interest under section 50 with such restrictions and conditions as may be prescribed.

Q58. Under what circumstances proper officer cannot allow payment of tax dues in installments?

Ans. The facility of payment of tax dues in installments shall not be allowed where:

- (a) The taxable person has already defaulted in payment of any amount under the CGST Act or IGST Act or UTGST Act or any SGST Act for which recovery process is on;
- (b) The taxable person has not been allowed to make payment in installments in the preceding financial year under the CGST Act or IGST Act or UTGST Act or any SGST Act;
- (c) The amount for which installment facility is sought is less than ₹ 25,000/-.

Q59. Whether proper officer can allow payment of self-assessed tax in instalments?

Ans. No. The proper officer shall have the power to allow payment of any amount due under this Act in instalments on tax other than the self-assessed tax.

Q60. What will be the recourse available to the proper officer in case of default in payment of any instalment on its due date by the taxable person?

Ans. Where there is default in payment of any one instalment on its due date by the taxable person, the whole outstanding balance payable on such date shall become due and payable forthwith, without any further notice. The proper officer can initiate recovery of dues.

Q61. Can an unregistered person be covered under the said provisions of Section 80?

Ans. A taxable person is covered by the provision of Section 80, While Section 2(107) defines taxable person as “a person who is registered or liable to be registered under Section 22 or Section 24”.

Transfer of property to be void in certain cases (Section 81)

Q62. What happens if 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, 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?

Ans. Such charge or transfer shall be void 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 and without notice of the pendency of such proceedings under the Act, or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Tax to be first charge on property (Section 82)

Q63. Whether any amount payable by the taxable person under this Act is a first charge on his property?

Ans. Yes. Notwithstanding anything to the contrary contained in any law for the time being force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, first charge shall be on –

- (a) the property of taxable person in respect of any amount payable by such taxable person, or
- (b) the property of any other person on account of tax, interest or penalty which he is liable to pay to the Government.

Q64. Are unregistered persons covered under the said provisions of Section 82?

Ans. The section refers to both taxable person and any other person, on whose property first charge could be created. Hence, all persons as defined under Section 2(84) of the CGST Act would be covered, whether he is a taxable person or not.

Provisional attachment to protect the revenue in certain cases (Section 83)

Q65. Whether property of a taxable person can be provisionally attached to protect the revenue?

Ans. Yes. During the pendency of any proceedings under section 62, 63, 64, 67, 73 or 74, the Commissioner may pass an order in **Form GST DRC-22** to attach any property including bank account belonging to a taxable person provisionally for the purpose of protecting the interest of the Government revenue.

Q66. Under which proceedings the property of a taxable person can be provisional attached?

Ans. Provisional attachment shall be applicable for the following pending proceedings of a taxable person:

- (a) Assessment of non-filers of returns. (Section 62)
- (b) Assessment of unregistered persons. (Section 63)
- (c) Summary assessment in certain special cases. (Section 64)
- (d) Inspection, search and seizure. (Section 67)
- (e) Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts. (Section 73)
- (f) Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts. (Section 74)

Q67. Under what circumstances the property of a taxable person provisionally attached be released?

Ans. The property of a taxable person provisionally attached be released under the following circumstances:

- (a) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by him, whichever is lower, then such property shall be released forthwith by an order in **Form GST DRC-23**, on proof of payment.
- (b) Any person whose property is attached may, within 7 days of such attachment, file an objection to the effect that the property attached was or is not liable to be attached, and the Commissioner may, release the said property by an order in

Form GST DRC-23 after giving an opportunity of personal hearing to the person filing the objection.

- (c) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in **Form GST DRC-23**.

Q68. Is there an expiry for the provisional attachment order issued under section 83?

Ans. Yes. Every provisional attachment order shall cease to have effect after the expiry of one year from the date of such order.

Continuation and validation of certain recovery proceedings (Section 84)

Q69. What happens in cases where the tax demand confirmed is enhanced in appeal / revision proceedings?

Ans. The Commissioner shall issue order for enhancement of any demand in **Form GST DRC-25**. In so far as the amount already confirmed prior to disposal of appeal/revision, the recovery proceedings may be continued from the stage at which such proceedings stood immediately before such disposal.

Q70. What happens in cases where the tax demand confirmed is reduced in appeal / revision proceedings?

Ans. The Commissioner shall issue order for reduction of any demand in **Form GST DRC-25** to the taxable person and the appropriate authority with whom the recovery proceeding is pending. The recovery proceedings already initiated prior to the disposal of such appeal/revision may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

MCQ's

Section 73 & Section 74

Q1. What is the time limit for issue of order in case of fraud, misstatement or suppression?

- (a) 30 months
- (b) 18 months
- (c) 5 years
- (d) 3 years

Ans. (c) 5 years

- Q2. What is the time limit for issue of order in case of other than fraud, misstatement or suppression?
- (a) 30 months
 - (b) 18 months
 - (c) 5 years
 - (d) 3 years
- Ans. (d) 3 years
- Q3. Is it obligatory on the part of the Department to take on record the assessee's representation during adjudication and issue of order?
- (a) Yes
 - (b) No
 - (c) At proper officer's discretion
 - (d) If requested by notice
- Ans. (a) Yes
- Q4. What is the maximum amount of demand for which the officer can issue an order under section 73 in case of other than fraud, misstatement or suppression?
- (a) Amount of tax + interest + penalty of 10% of tax
 - (b) Amount of tax + interest + penalty of 10% of tax or ₹ 10,000/- whichever is higher
 - (c) ₹ 10,000/-
 - (d) Amount of tax + interest + 25% penalty
- Ans. (b) Amount of tax + interest + penalty of 10% of tax or ₹ 10,000/- whichever is higher
- Q5. What is the maximum amount of demand for which the officer can issue an order under section 74 in case fraud, misstatement or suppression?
- (a) Amount of tax + interest + penalty of 15% of tax
 - (b) Amount of tax + interest + penalty of 25% of tax
 - (c) Amount of tax + interest + penalty of 50% of tax
 - (d) Amount of tax + interest + penalty of 100% of tax
- Ans. (d) Amount of tax + interest + penalty of 100% of tax
- Q6. What is the prescribed monetary limit of Central Tax for Superintendent of Central Tax for issuance of show cause notices and orders under Section 73 and 74?
- (a) Not exceeding Rupees 10 lakhs

- (b) Above Rupees 10 lakhs and not exceeding Rupees 1 crore
- (c) Above Rupees 1 crore without any limit
- (d) Not exceeding Rupees 20 lakhs

Ans. (a) *Not exceeding Rupees 10 lakhs*

Q7. What is the prescribed monetary limit of Integrated Tax for Superintendent of Central Tax for issuance of show cause notices and orders under Section 73 and 74 read with Section 20 of the IGST Act?

- (a) Not exceeding Rupees 10 lakhs
- (b) Above Rupees 10 lakhs and not exceeding Rupees 1 crore
- (c) Above Rupees 1 crore without any limit
- (d) Not exceeding Rupees 20 lakhs

Ans. (d) *Not exceeding Rupees 20 lakhs*

Q8. What is the prescribed monetary limit of Central Tax for Deputy or Assistant Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74?

- (a) Not exceeding Rupees 10 lakhs
- (b) Above Rupees 10 lakhs and not exceeding Rupees 1 crore
- (c) Above Rupees 1 crore without any limit
- (d) Any amount without any limit

Ans. (b) *Above Rupees 10 lakhs and not exceeding Rupees 1 crore*

Q9. What is the prescribed monetary limit of Integrated Tax for Deputy or Assistant Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74 read with Section 20 of the IGST Act?

- (a) Not exceeding Rupees 20 lakhs
- (b) Above Rupees 20 lakhs and not exceeding Rupees 2 crore
- (c) Above Rupees 2 crore without any limit
- (d) Any amount without any limit

Ans. (b) *Above Rupees 20 lakhs and not exceeding Rupees 2 crore*

Q10. What is the prescribed monetary limit of Central Tax for Additional or Joint Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74?

- (a) Not exceeding Rupees 10 lakhs

- (b) Above Rupees 10 lakhs and not exceeding Rupees 1 crore
- (c) Above Rupees 1 crore without any limit
- (d) Any amount without any limit

Ans. (c) *Above Rupees 1 crore without any limit*

Q11. What is the prescribed monetary limit of Integrated Tax for Additional or Joint Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74 read with Section 20 of the IGST Act?

- (a) Not exceeding Rupees 20 lakhs
- (b) Above Rupees 20 lakhs and not exceeding Rupees 2 crore
- (c) Above Rupees 2 crore without any limit
- (d) Any amount without any limit

Ans. (c) *Above Rupees 2 crore without any limit*

General provisions relating to determination of tax (Section 75)

Q12. Where the service of Notice or issuance of order is stayed by a Court order, can the period of such stay be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or in sub-sections (2) and (10) of section 74?

- (a) Yes
- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (a) Yes

Q13. What is the maximum number of times a hearing can be adjourned?

- (a) 1
- (b) 3
- (c) 5
- (d) None of the above

Ans. (b) 3

Q14. Whether the amount of tax, interest and penalty demanded in the order can exceed the amount specified in the Notice?

- (a) Yes

- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (b) No

Q15. Whether penalties under any other provisions of the Act be imposed in respect of adjudication proceedings under section 73 or 74?

- (a) Yes
- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (b) No

Q16. What is the time limit for issue of order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, from the date of communication of the said direction?

- (a) 30 months
- (b) 18 months
- (c) 2 years
- (d) 5 years

Ans. (d) 2 years

Q17. Whether interest is payable on the tax short paid or not paid even if it is not specified in the order determining the tax liability?

- (a) Yes
- (b) No
- (c) Only if concluded by an order later

Ans. (a) Yes

Tax collected but not paid to Government (Section 76)

Q18. Any amount of tax collected shall be deposited to the credit of the Central or State Government:

- (a) Only when the supplies are taxable
- (b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not

- (c) Only when the supplies are not taxable
- (d) None of the above

Ans. (b) *Regardless of whether the supplies in respect of which such amount was collected are taxable or not*

Q19. Is there any time limit for issue of notice under section 76 in cases where tax collected but not paid?

- (a) No time limit
- (b) 1 year
- (c) 3 years
- (d) 5 years

Ans. (a) *No time limit*

Q20. Within how many years should the proper officer issue an order from the date of issue of notice?

- (a) 1 year
- (b) 2 years
- (c) 3 years
- (d) 4 years

Ans. (a) *1 year*

Q21. Whether the person who has borne the incidence of amount apply for refund of surplus left after adjustment towards tax collected but not paid under section 76?

- (a) Yes
- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (a) *Yes*

Q22. In case the person does not deposit tax collected in contravention of Section 76, is the same recoverable with interest?

- (a) Yes
- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (a) *Yes*

Tax wrongfully collected and paid to Central Government or State Government (Section 77 of the CGST Act, 19 of IGST Act and 12 of UTGST Act)

Q23. What happens if a taxable person has paid CGST & SGST or, as the case may be, CGST & UTGST (in SGST / UTGST Act) on a transaction considered by him to be an intra-state supply but which is subsequently held to be an inter-state supply?

- (a) Seek refund
- (b) Adjust against future liability
- (c) Take re-credit
- (d) File a suit for recovery

Ans. (a) *Seek refund*

Q24. What happens if a taxable person has paid IGST (in IGST Act) on a transaction considered by him to be an inter-state supply but which is subsequently held to be an intra-state supply?

- (a) Seek refund
- (b) Adjust against future liability
- (c) Take re-credit
- (d) File a suit for recovery

Ans. (a) *Seek refund*

Q25. Whether a taxable 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 is required to pay interest?

- (a) Yes
- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (b) *No*

Q26. Whether a taxable person who has paid CGST& SGST or, as the case may be, CGST & UTGST on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply is required to pay interest?

- (a) Yes

- (b) No
- (c) At proper officer's discretion
- (d) None of the above

Ans. (b) No

Initiation of recovery proceedings (Section 78)

Q27. The time limit for payment of tax demand isfrom the date of service of the order,

- (a) 3 months
- (b) 90 days
- (c) 6 months
- (d) 1 year

Ans. (a) 3 months

Q28. If it is expedient in the interest of the revenue, can the proper officer after recording reasons in writing, require a taxable person to make payment of tax demand within shorter period as may be specified by him?

- (a) Yes
- (b) No
- (c) With prior permission of not below the rank of Joint Commissioner
- (d) None of the above

Ans. (a) Yes

Recovery of Tax (Section 79 of the CGST Act, 2017 & 13 of UTGST Act, 2017)

Q29. Recovery of amount payable by a defaulter can be made from:

- (a) Customer
- (b) Bank
- (c) Post Office
- (d) All of the above

Ans. (d) All of the above

Q30. After how many days, the proper officer may cause the sale of distressed property?

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 120 days

Ans. (a) 30 days

Payment of tax and other amount in installments (Section 80)

Q31. The following amounts due cannot be paid through installments,

- (a) Self-assessed tax shown in return
- (b) Short paid tax for which notice has been issued
- (c) Arrears of tax
- (d) Concealed tax

Ans. (a) *Self-assessed tax shown in return*

Q32. Maximum number of monthly installments permissible under section 80 is:

- (a) 36
- (b) 12
- (c) 48
- (d) 24

Ans. (d) 24

Q33. Which officer/s has the power to grant permission for payment of tax through installment?

- (a) Commissioner
- (b) Principal Commissioner
- (c) Assistant Commissioner
- (d) Both (a) and (b)

Ans. (d) *Both (a) and (b)*

Transfer of property to be void in certain cases (Section 81)

Q34. Which of the following acts by a person are treated as void when it is done after any amount has become due from him?

- (a) Creates charge on property
- (b) Parts with the property belonging to him
- (c) Parts with the property in his possession
- (d) All of the above

Ans. (d) *All of the above*

Q35. What all modes of transfers covered under section 81

- (a) Sale
- (b) Mortgage
- (c) Any other mode of transfer
- (d) All of the above

Ans. (d) *All of the above*

Q36. When transfer of property would be considered void?

- (a) Transaction is done to defraud the Government revenue
- (b) Transaction is done without the intention to defraud the Government revenue
- (c) Any of the above

Ans. (a) *Transaction is done to defraud the Government revenue*

Q37. When transfer of property would not be considered void?

- (a) Transaction is done for adequate consideration and without the notice of the pendency of proceedings under the Act
- (b) Transaction is done without the notice of such tax or other sum payable
- (c) With previous permission of the proper officer
- (d) All of the above

Ans. (d) *All of the above*

Tax to be first charge on property (Section 82)

Q38. Whether any amount payable under this Act by the taxable person is a first charge on his property?

- (a) Yes
- (b) No
- (c) None of the above

Ans. (a) Yes

Q39. What liabilities can be recovered on account of first charge on the property of such taxable person or such person as per section 82 of the CGST Act,2017?

- (a) Tax
- (b) Interest
- (c) Penalty
- (d) All of the above

Ans. (d) *All of the above*

Provisional attachment to protect the revenue in certain cases (Sec. 83)

Q40. Whether property of a taxable person be provisionally attached to protect the revenue?

- (a) Yes
- (b) No
- (c) None of the above

Ans. (a) Yes

Q41. Who is competent authority for passing an order for provisional attachment?

- (a) The Deputy Commissioner
- (b) The Commissioner
- (c) The GST Council
- (d) The Assistant Commissioner

Ans. (b) *The Commissioner*

Q42. Till what period does the order passed for provisional attachment is valid?

- (a) Infinite period

- (b) Ten years
- (c) One year
- (d) Till the end of such proceedings

Ans. (c) *One year*

Q43. Provisional attachment can be done under section 83:

- (a) Before completion of proceedings
- (b) After completion of proceedings
- (c) After 3 attempts to recover dues
- (d) Only if there is risk of delinquency in payment of dues

Ans. (a) *Before completion of proceedings*

Continuation and validation of certain recovery proceedings (Sec. 84)

Q44. The Commissioner shall issue a fresh notice to recover the Government dues, if:

- (a) Demand amount is enhanced
- (b) Demand amount is reduced
- (c) Both (a) and (b)
- (d) Neither (a) nor (b)

Ans. (a) *Demand amount is enhanced*

Q45. When Commissioner is not required to serve fresh notice to recover the Government dues?

- (a) Demand amount is reduced
- (b) Already proceedings of recovery of Government dues is served before disposal of appeal, revision of application or other proceedings
- (c) Demand amount is enhanced
- (d) Both (a) and (b)

Ans. (d) *Both (a) and (b)*

Q46. Who can issue fresh notice for enhanced demand by appeal, revision of application or other proceedings:

- (a) Commissioner
- (b) Assistant Commissioner
- (c) Joint Commissioner

(d) Any of above

Ans. (a) *Commissioner*

Q47. In terms of Rule 142 (7) of the CGST Rules, any rectification of order, in accordance with the provisions of section 161, shall be made by the proper officer in :

(a) Form GST DRC -07

(b) Form GST DRC -08

(c) Form GST DRC -09

(d) Form GST DRC -10

Ans. (b) *Form GST DRC-08*