

Assessment & Adjudication under GST

By

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Coverage

1. Assessment
2. Adjudication



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Section 59

Self Assessment

Every registered taxable person shall himself assess the taxes payable under this Act and

Furnish a return for each tax period as specified under section 39



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Section 60

Provisional Assessment

Where taxable person is unable to determine value of goods or services or both or to determine the rate of tax applicable thereto

Request may be made to the proper officer in writing giving reasons for payment of tax on provisional basis, and

The proper officer may allow at such rate or on such value as may be specified by him, by way of an order, within 90 days from the date of receipt of such request.

For such allowance execution of bond as prescribed with such surety or security as the proper officer may deem fit

This is required for binding taxable person for payment of difference of tax at the time of final assessment

The proper officer shall pass the final assessment order within 6 months from the date of communication of provisional order after taking into account such information as may be required for finalising the assessment.



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Section 60

Provisional Assessment

The above period of 6 months on sufficient cause being shown and for recorded reasons, by extended by JC/ADC for further period not exceeding 6 months or by Commissioner for further period not exceeding 4 years.

Taxable person shall pay interest, at the rate specified u/s 50(1), on any tax payable on supplies under provisional assessment but not paid within prescribed time limit u/s. 39

Interest to be paid for the period starting from the first day after the due date till the date of actual payment, whether such amount is paid before or after the issuance of final assessment.

In case taxable person entitled for refund u/s 54 after final assessment order, Interest shall be paid on such refund u/s 56.



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Section 61

Scrutiny of Returns

The Proper officer may scrutinize the return and the related particulars furnish by taxable person to verify the correctness of the return

The discrepancies if any shall be informed in such manner as may be prescribed and call for explanation thereto.

If explanation acceptable no further action to be taken and taxable person shall be informed

If no satisfactory explanation given within 30 days or extended period, of being informed, appropriate action may be initiated by the proper officer

In case discrepancies accepted by the taxable person, not corrected in the return of the month when accepted, appropriate action may be initiated by the proper officer including those u/s 65 or 66 or 67 or determine the tax and other dues u/s 73 or 74.



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Section 62

Assesment of non fillers of returns

Where return U/S 39 or U/S 45 is not filled, even after service of notice U/S 46

The proper officer may proceed to the best of his judgement and assess the tax liability

Such assesment must be on basis of available material or gathered material

Such assesment order must be issued within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which tax not paid relates.

In case valid return is filled within 30 days of service of aforesaid order, the said order shall be deemed to be withdrawn

Such withdrawn does not immune the taxable person from payment of interest u/s. 50 or late fee u/s. 47



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Section 63

Assesment of unregistered persons

Where 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 proceed to assess the tax liability of such taxable person to the best of his judgement

For the relevant tax periods and

Issue an assessment order within five years from the due date for filing of the annual return for the year to which the tax not paid relates:

Such assessment order shall not be passed without giving a SCN and reasonable opportunity of being heard



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Section 64

Summary Assessment in certain cases

In order to protect the interest of revenue, the proper officer having evidence of outstanding liability may, with prior permission of ADC/JC

Proceed to assess the tax liability and

Issue the assessment order provided he has reasons to believe that any delay would adversely affect the interest of revenue

In a situation where the person of whom the liability is, not ascertainable and the liability is of supply of goods, the person in-charge of such goods would become liable for payment of tax and other amount due

If the taxable person makes an application within 30 days from the date of receipt of aforesaid order, he may withdraw such order OR

If ADC/JC considers the aforesaid order as erroneous he may withdraw such order and

After withdrawal in both the above cases, the PO shall follow procedure laid down in Sec. 73 or 74



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Statutory Provision

Particular	Section 73	Section 74
Situation of proposing GST demand of tax , interest, penalty etc	When tax is not paid or short paid or wrong availment or utilization of ITC or refund is erroneously refunded For reason other than fraud or willful mis-statement or suppression of facts to evade tax	For reason of fraud or willful mis-statement or suppression of facts to evade tax
Time limit for issuance of SCN	3 month prior to issuance of order	6 month prior to issuance of order
Time limit for passing of order	Within 3 year from the due date for furnishing of annual return for financial year to which tax has not paid or short paid or wrong availment or utilization of itc relates to or 3 years from the date of erroneous refund	Within 5 year from the due date for furnishing of annual return for financial year to which tax has not paid or short paid or wrong availment or utlization of itc relates to or 5 years from the date of erroneous refund

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What is Show Cause Notice (SCN)

- ▶ Show Cause Notice (SCN) is the first stage of litigation in GST.
- ▶ SCN is to be issued for proposing any demand of tax, interest, fees, or penalty and is required to be issued for taking action with respect to payment of tax collected from any person which has not been deposited with the govt. ex –chequer.
- ▶ Under GST, the department is required to issue SCN when:
 - ▶ Tax is not paid or short paid; or
 - ▶ Tax is erroneously refunded; or
 - ▶ Input tax credit is wrongly availed or utilized; or
 - ▶ Any demand of tax , interest, fee or penalty is to be proposed as a result of inquiry or audit

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Analysis of Show Cause Notice

- ▶ Since SCN is the foundation of notice 's defense ,therefore noticee should critically examine the SCN to ensure that all the defenses available to him are being taken without prejudice to each other.
- ▶ Validity of SCN must be verified in pursuance of S-75 of the Act.
- ▶ SCN must be issued within the time limit as prescribed u/s section 73 or 74 of the act. It should be issued along with document relied upon by Department. However if RUD's are made available subsequent to receipt of SCN , then the date of receipt of RUD's shall be considered as date of receipt of SCN.
- ▶ It has been held in following judgments that merely making the relied upon documents available for inspection is not sufficient and copies of the relied upon documents have to be furnished:
 - ❑ Santogen silk mills v CCE – 2003(157) ELT 208-CESTAT Mumbai
 - ❑ PGO Processors P. LTD v CE – 2000(122) ELT 26- Rajasthan High Court



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Analysis of Show Cause Notice

- ▶ Jurisdiction – The noticee should examine whether the notice is issued by its jurisdictional proper officer and if not then it can be challenged on this ground.
- ▶ The SCN must be issued by the proper officer as per the monetary limits
- ▶ Invocation of statutory provision – The notice should examine whether all the relevant statutory provisions are mentioned/reproduced in the SCN.
- ▶ Rule 142 is properly followed or not by the proper officer issuing the show cause notice. [*Rajkamal Builder Infrastructure Pvt Ltd. vs Union of India vide R/Special Civil Application No 21534 of 2019 – High Court of Gujarat*]
- ▶ The SCN must be specific with respect to allegation and should not be suffered from vagueness and arbitrariness.
- ▶ Without proper show cause notice, demand cannot be confirmed against the noticee.
- ▶ Whenever the department placed reliance on the statement of third party and the same is not made available to the noticee, he must ask for the same and cross-examine. [*Basudev Garg Vs. Commissioner of custom-2017 (48) STR 427-Delhi High Court*]



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Settled Principles

- ❑ Extended period is not invocable
- Issue involves interpretation of law
- Bonafide act
- Issue remained the subject matter of litigation for a considerable period of time
- Where the confusion exists or the general practice is not to charge service tax.

Principles governing Extended Period

- ✓ Element of fraud, collusion etc is must. Therefore if entire data is disclosed in ST-3 the extended period cannot be invoked. [*Scott Wilson Kirkpatrick (I) Pvt Ltd. Vs. CST Bangalore (2007) 8 STJ 358 (CESTAT Bangalore)*]
- ✓ Extended period cannot be invoked where the department itself is not clear about the facts. [*Nexus Computers Pvt Ltd Vs. CCE (2008) 9 STR 34 Chennai Tribunal*]
- ✓ Extended period cannot be invoked where the department was aware about the facts as the assessee provided the requisite information. [*Gujarat Ambuja Exports Ltd. Vs. UOI (2012) 26 STR 165 (Gujarat HC)*]
- ✓ Mere failure to declare would not amount to wilful suppression since for wilful suppression the positive act from the side of the assessee shall be found. [*Infinity Infotech Parks Ltd. Vs. UOI & Others 2012 – TIOL – 987 (Delhi High Court)*]

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Statutory Provision

Voluntary tax payment

Section 73	Section 74
Proper officer shall not serve any notice/statement on receipt information with respect to payment of tax along with application interest on the basis of his own ascertainment or as ascertained by proper officer. Such payment must be made before service of notice /statement	Proper officer shall not serve any notice/statement on receipt information with respect to payment of tax along with application interest and 15% of tax as penalty on the basis of his own ascertainment or as ascertained by proper officer. Such payment must be made before service of notice /statement
If the applicable pay tax along with applicable interest within 30 days from the date of issuance of notice/statement ,then the penalty shall not be applicable and all the proceeding in the respect shall be deemed to be concluded .	If the applicable pay tax along with applicable interest and 25% of tax as penalty within 30 days from the date of issuance of notice/statement ,then the penalty shall not be applicable and all the proceeding in the respect shall be deemed to be concluded .
If the officer is opinion that amount paid by assessee fall short of amount actually payable ,he shall proceed to issue of notice in respect of amount short paid	

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Statutory Provision

Particular	Section 73	Section 74
Quantum of penalty where tax and interest is paid at different stages	<ul style="list-style-type: none"> •Before notice –No penalty •Within 30 days from notice – NO penalty •Maximum penalty -10% of tax or Rs.10000/- 	<ul style="list-style-type: none"> •Before notice -15% of tax •Within 30 days from notice –25% of tax •After 30days of receipt of order :50% of tax •Maximum penalty -100% of tax .
For other tax period	Serve as a statement	



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General Provisions – Section 75

➤ Where service of notice or issuance of order is stayed by an order of a court or an appellate tribunal, then the period of such stay shall be excluded for computing the period for issuance of notice or order as prescribed u/s 73 or 74.

➤ Where the appellate authority /Tribunal /court concludes that the charge of fraud etc to evade has not been established, the notice issued earlier u/s 74 shall be deemed to be a notice issued u/s 73 and the proper officer shall determine the tax payable accordingly.

➤ An opportunity of hearing shall be granted on receipt of a request in writing or where any adverse decision is contemplated against person chargeable with the tax or penalty.

➤ The proper officer can adjourn the personal hearing if sufficient cause is shown in writing for reason record in writing, subject to maximum of 3 adjournments.

19 ➤ Order cannot be passed beyond the scope of SCN in terms of amount of tax, interest, and penalty as well as the ground specified in the notice.



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- Interest of tax not paid or short paid shall be payable whether or not specified in order.
- The adjudication proceeding shall be deemed to be concluded where the order is not issued within time limit of 3 or 5 years as the case may be.
- Where any decision on an issue has been given by AA or AT or HC which prejudicial to the interest of revenue in some other proceedings against which an appeal is pending before AT or HC or SC , then the period spent between the date of decision of respective authorities at respective stages shall be excluded for computing period for issuance of order as prescribed u/s 73 or 74.
- ***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.***
[LC Infra Projects (P.) Ltd. vs. Union of India, WP No 28876 of 2019, High Court of Karnataka]
- Where any penalty is imposed under section 73 or 74 , no penalty shall be imposed for same act or omission on the same person under any other provision of this act.



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Tax Collected but Not Paid -Sec 76

- ❑ *Notwithstanding anything to the contrary* contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, *every person who has collected from any other person any amount as representing the tax* under this Act, *and has not paid* the said amount to the Government, *shall forthwith pay the said amount* to the Government, *irrespective of whether the supplies in respect of which such amount was collected are taxable or not.*
- ❑ Where any amount is required to be paid to the Government under subsection (1), and which has not been so paid, the proper officer may serve SCN for tax and equivalent penalty.
- ❑ The proper officer shall, after considering the representation, determine the amount due from such person and thereupon such person shall pay the amount so determined.



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Tax Collected but Not Paid -Sec 76

- ❑ The person referred to in sub-section (1) shall 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.
- ❑ 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.
- ❑ *The proper officer shall issue an order within one year from the date of issue of the notice.*



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Tax Collected but Not Paid -Sec 76

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



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Tax wrongfully collected and paid-Sec 77

- 1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
- 2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.



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Provisional Attachment -Sec 83

- 1) Where during the pendency of any proceedings
 - ✓ under section 62 or section 63 or section 64 or section 67 or section 73 or section 74,
 - ✓ *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 in such manner as may be prescribed.

- 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).

[Gandhi Trading vs. Asstt. CIT [1999] 239 ITR 337 (Bom.)]

[Pranit Hem Desai vs. Additional Director General, SCA No 9392 of 2019]



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Controversy with regards to Recovery

- ❑ Can recovery be initiated prior to Adjudication?

Where Competent Authority had attached provisionally bank accounts of assessee, since assessee had not been issued notice under section 74 or any other sections quoted in section 83, writ petition deserved to be allowed [*Anandbhavan Properties (P.) Ltd. vs Union of India, W.P No. 21494 of 2019*]

- ❑ No tax can be collected without Adjudication. [*Chitra Builders Pvt Ltd. VS. The Additional Commissioner of Customs, CE & ST Coimbatore & Others 2013 (2) TMI 38 Madras High Court.*]



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Controversy with regards to Multiple Authorities approaching taxable person

- ❑ Is cross jurisdiction/empowerment allowed?
 - ✓ In case of Administrative Action
 - ✓ In case of Investigative Action
 - *Bhawani Textiles vs Additional Director General*, Special Civil Application No 5273 of 2020 – Gujarat High Court
 - letter D.O. F.No. CBEC/20/43/01/2017-GST (Pt.) dated 05.10.2018 by CBIC



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