

Demand and Recovery

By

Raja Krishna Chataraju
Deputy Commissioner(ST)

Outline

- Determination of Tax.
- General provisions relating to determination of tax.
- Tax collected but not paid to Government.
- Tax wrongfully collected and paid.
- Initiation of recovery proceedings.
- Recovery of Tax.
- Payment of tax and other amount in installments.
- Transfer of property to be void in certain cases.
- Tax to be first charge on property
- Provisional attachments.
- Quick Evaluation.

Determination of Tax

- When it appears to proper officer that:
 - Tax has not been paid
 - Short paid
 - Erroneously refunded
 - ITC has been wrongly availed or utilized
- He shall issue a notice in Form GST DRC 01 mentioning such details for the tax period .

Determination of tax not paid or short paid or erroneously refunded

Section 73: Applicable in case of non-payment or short payment of tax without fraud or willful-misstatement.

Section 74: Applicable in case of non-payment or short payment of tax with fraud or willful-misstatement.

Proper officer to issue a Show Cause Notice in both cases (In FORM GST DRC-01)

Mere statement containing the non-payment or short payment can be served for subsequent periods instead of detailed show cause notice, only if the grounds raised are identical to the ones raised in the previous year. (In FORM GST DRC-02)

Time limit for the proper officer to issue notice – at least 3 months prior to issuance of order

Time limit for the proper officer to issue notice – at least 6 months prior to issuance of order

Time limit for the proper officer to issue an order is within **three years from the due date / actual date of filing of annual return.**(In Form GST DRC 07)

Time limit for the proper officer to issue an order is **within five years from the due date / actual date of filing of annual return** (In Form GST DRC 07)

Penalty in case of other than fraud or willful-misstatement under Section 73

Situation	Penalty Amount
Before issuance of show cause notice	No penalty
Within 30 days after the issuance of the show cause notice	No penalty
After 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs. 10,000 whichever is higher

Penalty in case of fraud or willful-misstatement under Section 74

Situation	Penalty Amount
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of show cause notice	25% of the tax amount
Within 30 days from the issuance of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)

General provisions relating to determination of tax

- Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the time limit for passing order.
- 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, 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.

General provisions relating to determination of tax

- An order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, shall be issued within two years from the date of communication.
- 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.
- The proper officer shall, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.
- No such adjournment shall be granted for more than three times to a person during the proceedings.

General provisions relating to determination of tax

- The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice .
- No demand shall be confirmed on the grounds other than the grounds specified in the notice.
- 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.

General provisions relating to determination of tax

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

Tax collected but not paid to Government

- 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.
- If tax mentioned above is not paid a notice shall be issued and orders to be issued within one year of notice.

Tax wrongfully collected and paid (Section 77)

- A registered person who has paid the Central tax and State 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.
- No interest is required to pay

Initiation of recovery proceedings (Section 78)

- Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid within a period of three months from the date of service.
- Proper officer in the interest of revenue, 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

Recovery of Tax (Section 79)

- 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.

Detaining and selling of goods

- The proper officer may recover or may require any other specified officer recover the amount so payable by detaining and selling any goods belonging to such person.
- 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.

Recovery from third parties

- 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

Detaining / attachment of movable or immovable property and adjustment of tax dues from sale proceeds

- 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 distrain 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

Detaining / attachment of movable or immovable property and adjustment of tax dues from sale proceeds

- 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

Recovery of tax dues as arrears of land revenue

- 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 through Court

- 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 from Company in liquidation

- 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.
- For the purposes of Section 79 of the GST Act, the word person shall include “distinct persons”.

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

- To be granted by Commissioner (In FORM GST DRC-21) , on an application filed by a taxable person(FORM GST DRC- 20).
- Reasons to be recorded in writing.
- Can extend the time for payment or allow payment of any amount due in monthly installments not exceeding twenty four (interest to be paid).
- On default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due

Transfer of property to be void in certain cases – Section 81

- The said provision is for protecting the Government revenue by avoiding transfer of property by a taxable person to another person.
- This would prevent any attempt to defraud the revenue by alienating the properties.
- The said provision would be applicable only when any tax would become due.

Transfer of property to be void in certain cases

- The following acts done by a person, in favour of any another person, after the tax becomes due, would be void

Situations / cases – Void	Situations / cases – valid
Creates a charge on; or	Made for adequate consideration and
Parts with the property	Without notice of the pendency of proceeding
Belonging to him; or	Without notice of such tax or other sum payable by the said person,
In his possession By way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties.	With previous permission of the proper officer.

Tax to be first charge on property (Section 82)

- 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.
- 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.

Provisional attachment (Section 83)

- This section applies only during the pendency of any proceedings under

Section 62	Assessment of non-filers of returns
Section 63	Assessment of unregistered persons
Section 64	Summary assessment in certain special cases
Section 67	Power of inspection, search and seizure
Section 73	Determination of tax not paid or short paid or erroneously refunded other than fraud
Section 74	Determination of tax not paid or short paid or erroneously refunded in case of fraud

Provisional attachment (Section 83)

- The Commissioner for the purpose of protecting the interest of the Government revenue, by order in writing(In FORM GST DRC-22) attach provisionally any property, including bank account, belonging to the taxable person.
- Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order

Continuation and validation of certain recovery proceedings (Section 84)

In case the Government dues are reduced in any appeal, revision or in other proceedings – the Commissioner

- 1) Is not required to serve fresh notice of demand upon the taxable person;
- 2) Shall intimate such reduction to taxable person and also to appropriate authority with whom recovery proceedings are pending;
- 3) Any recovery proceedings are initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Continuation and validation of certain recovery proceedings (Section 84)

- If notice of demand is already served on taxable person before appeal, revision or any other proceedings, then recovery of enhanced amount, if any , would be continued from the stage at which the initial proceedings stood.
- There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.

Quick Evaluation

- 1) Maximum number of monthly installments permissible under section 80 is:
(a) 6 (b) 12 (c) 18 (d) 24

- 2) Under section 79, Recovery of amount payable by a defaulter can be made from relative of the defaulter ,who have to pay amount to the defaulter.
True/False

- 3) The time limit for payment of tax demand isfrom the date of service of the order.
(a) 3 months (b) 100 days (c) 8 months (d) 16 months

- 4) Who can Provisionally attach property under section 83:
a) Commissioner
b) Joint Commissioner on permission from Commissioner
c) Joint Commissioner
d) Any proper officer on permission by commissioner

- 5) Where any person chargeable with tax under Section 73(1) or 73 (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, penalty of 10% of tax mentioned in notice shall be payable .
True/False

Quick Evaluation

- 6) The proper officer shall issue the notice under section 74(1) (Wilful cases) at least six months prior to the time limit specified for issuance of order.
True/False
- 7) The amount of tax, interest and penalty demanded in the order can exceed the amount specified in the Notice.
True/False
- 8) Maximum amount of penalty mentioned under section 74 (Wilful cases) is
- Equivalent to value of goods/services/both
 - Equivalent to value of goods/services/both reduced by tax
 - 100% of tax specified in the notice
 - 50% of tax specified in the notice
- 9) 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?
Yes/No
- 10) Additional Commissioner has power to grant Installments for payment of any amount due.
True/False



THANK YOU