



# Demands and Recovery

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# Presentation Plan



- Determination of tax not/short paid or erroneously refunded [S.73&74]
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# Determination of tax not paid or short paid or erroneously refunded



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**Tax not paid / short paid or erroneously refunded or ITC wrongly availed / utilised, where no fraud/wilful statement/ suppression of facts involved –**

- Notice to be issued at least 3 months before the last date for passing the order  
[Sec. 73(1)]
- Order passed within **3 years** from the due / actual date, whichever is earlier, for filing Annual Return  
[Sec.73(10)]
- Service of statement containing details of tax not paid/ITC wrongly availed for subsequent periods on same grounds  
[Sec.73(3)&(4)]
- Option to pay the tax, interest (as per Section 50) before service of notice under sub-sec.(1) either on own ascertainment or informed by the proper officer (**Superintendent**) – no notice/penalty  
[Sec.73(5)&(6)]
- Where amount paid falls short of the amount actually payable, proper officer (**Superintendent**) to issue notice for such amount which falls short of the amount actually payable  
[Sec.73(7)]

# .. Determination of tax not paid or short paid or erroneously refunded



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- Where any person chargeable with tax under sub-sec.(1) or sub-sec.(3) pays the tax along with interest [Sec.50] within 30 days of issue of notice, no penalty shall be payable and all proceedings shall be deemed to be concluded **[Sec.73(8)]**
- Proper Officer (**Superintendent**) after consideration of reply, will pass an order determining the amount of tax, Interest and penalty equivalent to 10% of tax or Rs.10,000/- whichever is higher, due from such person.

**[Sec.73(9)]**

# .. Determination of tax not paid or short paid or erroneously refunded



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**Tax not paid / short paid or erroneously refunded or ITC wrongly availed / utilised, where fraud/ wilful statement/ suppression of facts involved –**

- Notice to be issued at least 6 months prior to last date for passing order  
**[Sec.74(1)]**
- Order passed within **5 years** from the due / actual date, whichever is earlier, for filing Annual Return  
**[Sec.74(10)]**
- Service of statement containing details of tax not paid/ITC wrongly availed for subsequent periods on same grounds  
**[Sec.74(3)&(4)]**
- Option to pay the tax, interest and 15% of penalty equivalent to such tax before service of notice under sub-sec.(1) - either on own ascertainment or informed by the proper officer – no notice  
**[Sec.74(5)&(6)]**

## .. Determination of tax not paid or short paid or erroneously refunded



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- Where amount paid falls short of the amount actually payable, proper officer **(DC/AC)** to issue notice for such amount [Sec.74(7)]
- Where any person chargeable with tax under sub-sec.(1) pays the tax along with interest [Sec. 50] and a penalty equivalent to **25% of tax within 30 days of communication of notice**, all proceedings shall be deemed to be concluded [Sec.74(8)]
- Proper officer **(DC/AC)** to issue the order, after considering the representations if any, made by the person chargeable with tax, determining the tax, interest and penalty due from such person [Sec.74(9)]
- Where any person served with an order under sub-section (9) pays the tax along with interest and penalty equivalent to **50% of tax, within 30 days of the communication of the order**, all proceedings in respect of such tax, shall be deemed to be concluded [Sec.74(11)]

## .. Determination of tax not paid or short paid or erroneously refunded



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- Suppression: Explanation 2 of Section 74:—

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

# General provisions relating to determination of tax



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- Where the service of notice / issuance of order is stayed by an order of a Court or Tribunal, period of such stay shall be excluded for computing the period of three/five years [Sec.75(1)]
- Where any Appellate Authority holds that the charges of fraud/suppression/wilful mis-statement is not established, the proper officer shall determine the tax payable for the period of three years, deeming as if the notice is issued under sub-section 73(1) [Sec.75(2)]
- Where any order is to be issued in pursuance of direction of Appellate Authority/Tribunal/ Court, order to be issued **within 2 years of such directions** [Sec.75(3)]
- Opportunity of personal hearing shall be granted where a request is received in writing, or where any adverse decision is contemplated against any person [Sec.75(4)]
- Maximum 3 adjournments of hearing, during the adjudication proceedings [Sec.75(5)]



# .. General provisions relating to determination of tax



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- Proper officer shall set out the relevant facts and the basis of decision in his order [Sec.75(6)]
- 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 grounds other than the grounds specified in the notice [Sec.75(7)]
- Where Appellate Authority/Tribunal/ Court modifies the amount of tax determined earlier, the amount of interest and penalty shall stand modified, taking into account, the amount of tax revised [Sec.75(8)]
- Interest on tax short / not paid shall be payable whether or not specified in the order determining the tax liability [Sec.75(9)]
- Deemed conclusion of adjudication proceedings, **if order not issued within three /five years** [Sec.75(10)]

# Tax collected but not paid to Government



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- Every person who has collected any amount as representing the tax shall deposit the amount to the credit of Central / State Government, regardless of whether the supplies in respect of which such amount collected are taxable or not; [Sec.76(1)]
- Proper officer (**DC/AC**) to serve a notice on the person who has not paid the amount to the credit of Central / State Government under sub-sec.(1) requiring him to show cause as to why the amount should not be paid and why a penalty equivalent to the amount shall not be imposed [Sec.76(2)]
- Proper officer to pass an order **within one year**, following principles of natural justice, determining the amount due from such person and interest payable thereon [Sec.76(3)to76(8)]
- Amount paid under sub-sec. (1) or sub-sec. (3) to be adjusted against the tax payable and the balance to be credited to the Fund or the person who has borne the incidence of such amount [Sec.76(9)(10)]
- Persons who has borne the incidence of the amount to apply for Refund as per Section 54 [Section 76(11)]

# Tax wrongfully collected & paid to Central Government or State Government



1 1

- A registered person who has paid Central tax and State tax/UT tax on a transaction **considered** by him to be an **intra-state supply**, which is subsequently held to be an **inter-state supply**, be allowed refund of the amount of taxes so paid subject to such conditions as may be prescribed

[Sec.77(1)]

- A registered person who has paid Integrated tax on a transaction **considered** by him to be an **inter-state supply**, which is **subsequently held** to be an **intra-state supply**, shall not be required to pay any interest on the amount of Central tax or State tax/UT tax payable

[Sec.77(2)]



Reason other than  
**Fraud**  
**Wilful misstatement**  
**Suppression for evasion**

**Tax, interest paid suo moto or on information**  
**No notice**

**Payment < payable**

**Tax, interest paid within 30 days**  
**No order; proceeding concluded**

**NO**

**Tax, interest and penalty**  
**higher of 10% of tax evaded or Rs.10000**

**Order, after hearing,**  
**Within 3 years**

**Tax short paid/not paid**  
**ITC wrongly availed/utilized**  
**Erroneous refund**

Notice for any period  
**Statement** for other periods  
**For tax, int. penalty**



**Fraud, wilful misstatement,  
Suppression for evasion**

Tax, interest & 15% penalty paid  
before notice then NO notice

Notice for tax, interest,  
penalty (100% of tax)

Payment < payable

Tax, interest, 25% penalty paid within 30 days  
**No order, proceeding concluded**

**NO**

Tax, interest and penalty = 100% of tax

Order, after hearing,  
within 5 years

Tax, interest, 50% penalty paid within 30 days  
**Proceeding concluded**



"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract; (1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent.

### Material misstatement

A statement/assertion of such consequence, importance or significance as to be likely to influence the determination of a cause so as to render it incorrect.

### Suppression :

When there is an obligation to speak or report, a failure to speak or report constitutes suppression.



# Recovery of tax



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- Modes of Recovery
  - Proper officer **(DC/AC)** may **deduct** or may require any other specified officer to deduct the amount so payable **from any money owing to such person** which may be under the control of the proper officer or such other specified officer  
**[Sec.79(1)(a)]**
  - Proper officer **(DC/AC)** may recover or may require any other specified officer to recover the amount so payable by **detaining and selling any goods** belonging to such person which are under the control of the proper officer or such other specified officer  
**[Sec.79(1)(b)]**
  - Proper officer **(DC/AC)** may, by notice in writing, require **any other person from whom money is due or may become due to such person** to pay the amount to the Government
- Every person to whom the notice is issued shall be bound to comply with such notice

# .. Recovery of tax



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- Any person who fails to make the payment in pursuance to a notice under this section shall be **deemed to be a defaulter** for the amount specified in the notice **[Sec.79(1)(c)]**
  
- Proper officer (**DC/AC**) may on authorization by the competent authority, **distrain any moveable or immovable property belonging to or under the control of such person**, and detain the same until the amount payable is paid **[Sec.79(1)(d)]**
  
- Proper officer (**DC/AC**) may **prepare a certificate specifying the amount and send it to the Collector of the district** in which such person owns any property or resides or carries out his business, and on receipt of such certificate, the Collector shall proceed to recover the amount as if it were an arrear of land revenue **[Sec.79(1)(e)]**



# .. Recovery of tax



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- Proper officer (DC/AC) may file an application to the appropriate **Magistrate** and such Magistrate shall proceed to recover the amount specified as if it **were a fine imposed by him** **[Sec.79(1)(f)]**
- Proper officer of State tax /UT tax during the course of recovery of said tax arrears may recover the amount from such person as if it were an arrear of State tax /UT tax and credit the amount so recovered to the account of Government **[Sec.79(3)]**
- Where the amount recovered is less than the amount due to the Central Government and State Government/UT Government, the amount credited would be proportionally shared between the Central Government and State Government/ UT Government. **[Sec.79(4)]**

# Payment of tax and other amounts in instalments



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- Commissioner may for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due, other than the amount due as per the liability self-assessed in any return, by such persons in **monthly instalments not exceeding 24**, subject to payment of interest under sec. 50
- Where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith, which shall be recovered without any further notice

[Sec. 80]

# Transfer of property to be void in certain cases



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- Where a person, after any tax has become due from him, **creates a charge on or parts with the property** belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer in favor of any other person with an intention of defrauding the government revenue, **such charge or transfer shall be void** as against any claim in respect of any tax or other dues payable by the said person
- Such charge or transfer shall not be void if it is made for adequate consideration in good faith and without notice of pendency of such proceedings, or without notice of such tax or other sum payable by the said person or with the previous permission of the proper officer

[Sec. 81]

# Tax to be first charge on property



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- 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 Central or a State Government shall be a **first charge on the property** of such taxable person or such other person
- Notwithstanding anything to the contrary provided in any law
- Save as otherwise provided in the Insolvency and Bankruptcy Code 2016

**[Sec. 82]**

# Provisional attachment to Protect Revenue in certain Cases



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- During the pendency of any proceedings under sec.62, sec. 63, sec.64 or sec.67 or sec.73 or sec.74, if the Commissioner is of the opinion that for the purpose of protecting the interest of the government revenue, he may by order in writing **attach provisionally any property including Bank Account** belonging to the taxable person in the manner prescribed
- Every such provisional attachment shall cease to have effect after the **expiry of a period of one year** from the date of the order

[Sec. 83]

# Continuation and validation of certain recovery proceedings



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- Where any notice of demand for tax, interest, penalty is served upon any taxable person and any appeal or revision application is filed or other proceedings initiated in respect of such Government dues, then
  - Where such Government dues **are enhanced in appeal/revision/proceeding**, the Commissioner shall serve upon the taxable person **another notice of demand only in respect of the amount by which such dues are enhanced** and any recovery proceeding in relation to the dues covered by the notice of demand served on such person before the disposal of such appeal/revision/proceeding may without service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal

[Sec. 84(a)]

# .. Continuation of certain recovery proceedings



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- Where Government dues **are reduced in appeal/revision/proceeding**, it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand
- the Commissioner shall give an intimation of such reduction to the person or the appropriate authority with whom the recovery proceeding is pending
- any recovery proceedings initiated on the basis of demand served upon him prior to the disposal of such appeal/revision/proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal

**[Sec. 84(b)]**



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