

# Administering GST: Disputed Resolutions- Appeals and Revisions adjudication, Demand and Recovery.

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# Relevant Provisions of Constitution of India that were amended

- Article 264A- Special Provisions with respect to goods and Services Tax
- Article 248 – Residuary Powers of Legislation
- Article 249- Power of Parliament to legislate with respect to a matter in the state list in the National interest
- Article 250- Power of Parliament to legislate with respect to any matter in the state list if a proclamation of Emergency is in operations
- Article 268- Duties levied by the Union but collected and appropriated by the State
- Article 269- taxes levied and collected by the Union but assigned to the state

# Relevant Provisions of Constitution of India that were amended

- Article 269A- Levy and collection of goods and services tax in Course of inter-State trade or commerce
- Article 270- Taxes Levied and distributed between the Union and the States
- Article 271- Surcharges on certain duties and taxes for purpose of the Union.
- Article 279A- Goods and Services Tax Council
- Article 286- Restriction as to imposition of tax on the sale or purchase of goods

# Goods and Services Tax Council- Article 279A

- GST council consist of the Union Finance Minister as the Chairman and all state Finance Minister or such other minister
- The Council is a Constitutional and policy body for GST
- The Council has the powers to make recommendation and take decision on the various issues provided under Article 279A(4)

# Goods and Services Tax Council- Article 279A

- Every decision of the Goods and services Tax council shall be taken at a meeting
- A majority of not less than three-fourths of the weighted votes of the member present and voting
- While determining the three-fourths of the weighted votes, the following principles will apply
  - a. the vote of the central government shall have a weightage of one-third of the total votes cast and
  - b. the vote of the State government shall have a weightage of two-thirds of the total votes cast

# Acts introduced by the Parliament

Parliament had passed four acts for this purpose of introducing GST

- Central Goods and Services Act, 2017
- Integrated Goods and Services Tax Act, 2017
- Union Territory Goods and Services Act, 2017
- Goods And Services Tax (Compensation to States) Act

# Act introduced by the State

State Goods and Services Act, 2017

- Passed by each state based upon the Central Goods and Services Act, 2017, some variation, i.e. transitory provision, input tax credit, administration provisions

# Rules introduced in the Goods and Services Tax

- Central Goods and Services Tax Rules, 2017
- Integrated Goods and Services Tax Rules, 2017



# Acts that were repealed

- Central Excise Act 1944,
- Central Excise Tariff Act 1985
- (State) General Sales Tax/Value Added Tax Act
- Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- Additional Duties of Excise (Goods of Special Importance) Act, 1957
- Additional Duties of Excise (Textiles and Textile Article) Act, 1978

# Statutory based for council recommendation

## Section 9- Levy and Collection

- There must be an intrastate supply of goods or services or both within the meaning of the Act except on liquor and Petroleum products
- The tax will be collected at the prescribed rates as determined under section 15 but not exceeding twenty percent.
- The government shall notify the Prescribed rate on the recommendation of the council
- Tax can be collected in the prescribed manner from the taxable person.

"Prescribed" has been defined under section 2(87) to mean rules made under the Act on the recommendation of the council.

# Assessment- Section 2(11)

- Means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional, summary and best judgement assessment.

- **Bhopal Sugar Industries v/s State of MP 1979 3 SCC 792**

‘Assess’ in a taxing statute means the computation of income of assessee, the determination of tax payable by him and the procedure for collection or recovering the tax

- **Kalavati Devi V/s CIT 65 ITR 386(SC)**

‘Assessment’ can comprehend the whole procedure for ascertaining and imposing liability upon the taxpayer

# Kinds of Assessment Proceedings under the GST

Chapter XII section 59 to 64 of the CGST Act

kinds of Assessment proceedings

- Self-assessment (Section 59)
- Provisional Assessment (Section 60)
- Scrutiny of Returns (Section 61)
- Best Judgement Assessment on non –filing of returns (Section 62)
- Best Judgement Assessment of Unregistered persons (Section 63)
- Summary assessment in certain Special cases (Section 64)

# Self Assessment (Section 59)

- Registered person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39

# Provisional Assessment (Section 60)

- Taxpayers unable to determine the value or rate of tax applicable can make an application to the officer
- Officer to pass an order determining the value or rate of tax applicable, within 90 days on a provisional basis.
- Taxpayer to execute a bond with such surety and security for payment on difference between finally assessed and provisional basic.
- The officer shall grant the taxpayer an opportunity to be heard and consider the documentation before passing Final Assessment within 6 months from passing the Provisional order.
- The Period can be extended if sufficient cause is shown.
- Interest payable if tax payable after final assessment is more than tax paid after the due date
- Refund if tax payable was less along with interest

# Scrutiny of Return (Section 61)

- Proper officer scrutinize the return and related particulars furnished by a registered person.
- The officer to inform of any discrepancies noticed, after such scrutiny
- Explanation is found acceptable; the taxpayer shall be informed and no further action
- If discrepancies;
- If NO satisfactory explanation within 30 days or period provided or
- Taxpayer accepting the discrepancies but fails to rectify;
- the officer should initiate Audit or inspection, search, seizure and arrest under section 65,66 or 67 of the Act respectively or proceed to determine the tax and other due under section 73 or 74

# Best Judgement Assessment on Non – Filing of Return (Section 62)

- When registered person fails to furnish the return under section 39 or even after the notice served under section 46
- The officer may proceed to assess the tax liability of such person to the best of his judgement based on the relevant material which is available or gathered
- The order shall be issued within 5 years from the date of furnishing the annual return under section 44 of the Act.
- Where registered person furnishes a valid return within 30 days, the order shall be deemed to have been withdrawn
- The liability of payment of interest (section 50(1)) and late fee (section 47) shall continue even though order withdrawn



# Best Judgement Assessment on Unregistered Persons (Section 63)

- When a taxable person fails to obtain registration even though liable to tax or where the registration has been cancelled but liable to pay tax
- The officer may proceed to assess the tax liability of such person to the best of his judgement
- The order shall be issued within 5 years from the date of furnishing the annual return under section 44 of the Act.
- No assessment order without giving notice and an opportunity to be heard

# Principles behind Best Judgement Assessment

- Raghubar Mandal V/S State of Bihar 8 STC 770 (SC)

*Best Judgement Assessment is an estimate and involves guesswork, the estimate must relate to some evidence or material & not mere suspicion*

- Dhakeswari Cotton Mills v/s CIT 26 ITR 775 (SC)

*Technical rule of evidence and pleadings are not applicable in 'best Judgement assessment, but it cannot be pure guesswork.*

- State of Kerala V/S C. Velukutty 17 STC 465(SC)

*Reasonable Nexus to the available material and circumstances of case*

# Summary assessment in certain special cases (Section 64)

- Officer has evidence showing tax liability of a person, shall issue an assessment order
- Needs to show sufficient grounds that any delay in passing assessment order may adversely affect the interest of the Revenue
- The order shall be Passed after obtaining permission of the Additional Commissioner or Joint Commissioner
- The Person within 30 days from the date of receipt of order can make an application showing that the order is erroneous and to be withdrawn
- The Additional Commissioner or Joint Commissioner on his own motion consider the order is erroneous, may withdraw the order
- In case of withdrawal procedure provided under section 73 or 74 would be available
- If liability is not ascertainable, the Person in Charge of such goods shall be deemed to be a taxable Person and thereby liable for dues

# Appeals and Revisions under the GST

- Order passed by Adjudicating authority
- Appeal to the Appellate Authority (section 107)
- Revision powers of the Commissioner (Section 108)
- Appeal to the Appellant Tribunal (Section 109 to 110)
- Appeal to the High Court (Section 111 to 116)
- Appeal to the Supreme Court (Section 117 to 118)

# Adjudicating Authority- Section 2(4)

- Any authority, appointed or authorized to pass any order or decision under the Act
- not include the Board, the Revision Authority, Authority for the Advance ruling, Appellate Authority for Advance Ruling, the Appellate Authority for Advance Ruling and the Appellate Tribunal

# Appeals to Appellate Authority (AA) (Section 107)

- Any person aggrieved by any decision or order passed by adjudicating authority under CGST, SGST or UGST
- Appeal to AA within 3 months (further extension of 1 month)
- Mandatory pre-deposit for filing appeal
- The full amount of tax, interest, fine, fee and penalty as admitted by appellant and 10% of the disputed amount of the challenged order – The Recovery proceedings for the balance amount shall be deemed to stay

# Procedure by the Appellant Authority

- No adjournment shall be granted more than three times
- The AA may allow an additional ground of appeal if satisfied that the omission was not willful or unreasonable
- After making further inquiry pass order in writing, confirming, modifying or annulling and stating the points of determination but not refer back to the Adjudicating authority
- To decided wherever possible the appeal within 1 year unless issuance of order stayed by court or Tribunal (time to be excluded)
- No enhancement or Reduction of Input tax credit unless reasonable opportunity of hearing
- Order disposing of appeal to be reasoned and in writing

# Department Appeals to Appellate Authority (Section 107)(2), (3) and (4)

- The Commissioner at its own motion or on request from the Commissioner of State or Union Territory call for and examine the record of any proceedings.
- If he is not satisfied with the legality or propriety of such direction or order
- Direct the officer subordinate to him to apply to the AA within 6 months from the date of communication of the direction or order (further extension of 1 month)
- Such application shall be dealt with by the AA as an appeal against the Adjudicating authority



# Principles while condoning delay before the First Appellant Authority

- Singh Enterprises V/S CCE 2008 3 SCC 70 & Amchong Tea Estate V/S UOI 257 ELT 3 (SC)

The First Appellant authority has No Power to condone delay

- Uttam Sucrotech International V/S UOI (2011) 264 ELT 502 (Del)

Even one day delay is not condonable

- Om Prakash V/S Ashwini Kumar Barsi (2010) 258 ELT 5 (SC)

Authorities created by Statute cannot apply Limitation Act, 1963. They cannot condone the delay unless empowered by Statute.

- Ketan V Paresh V/S Director of Enforcement 29 Taxmann.com 373(SC) & MP Stell Corporation V/S CCE 57 Taxmann.com 399 (SC)

Delay can be condoned if assessee was pursuing Remedy bonafide wrong forum

# Appeal be made to both CGST & SGST authorities? – No

- As per the GST Act, CGST & SGST/UTGST officers are both empowered to pass orders. As per the Act, an order passed under CGST will also be deemed to apply to SGST.
- If an officer under CGST has passed an order, any appeal/review/revision/rectification against the order will lie only with the officers of CGST. Similarly, for SGST, for any order passed by the SGST officer, the appeal/review/revision/rectification will lie with the proper officer of SGST only.

# Powers of the Revision Authority (Section 108)

- The Revision Authority (RA) on his own motion or request from the Commissioner of State or Union
- Call for records and examine the record of any proceedings of a subordinate authority
- Can stay the direction or order passed, after giving an opportunity and making further inquiry, pass an order including making an enhancement or modifying or annulling the said direction or order

# Powers of the Revision Authority (Section 108)

## When Can the RA intervene

- If the direction or order is erroneous insofar as it is *prejudicial to the interest of revenue and is illegal or improper*, or
- has not taken into account certain material facts, or
- in consequences of an observation by the Comptroller and Auditor General of India.

# Powers of the Revision Authority (RA) (Section 108)

RA shall not exercise power under this section when

- The order is subject matter of Appeal to the AA, Appellant Tribunal, High Court or Supreme Court
- The period for filing department appeal under section 107 (2) has not expired
- more than 3 years have expired after the passing of the decision or order
- Order has already taken up for revision
- The order of revision has already been passed

# Powers of the Revision Authority (RA) (Section 108)

RA may pass an order

- When any point which not been raised and decided in appeal.
- This can be done before the expiry of a period of one year from the date of the order in such appeal or
- Before expiry of 3 years from the date of passing the decision or order
- The time limit of 3 years will not apply if there was a decision which is prejudicial to the interest of revenue in some other proceedings and an appeal filed by the department is pending.

# Appellate Tribunal (Section 111)

- No bound by the Code of Civil Procedure, but by the principles of natural justice, the Act and rule made.
- Powers to regulate its own procedure
- All proceedings before the Appellant Tribunal shall be deemed to be judicial proceedings

# Appellate Tribunal (Section 111)- execution of order

- The order passed by the Appellant Tribunal may be enforced in the same manner as it were a **decree made by the court in a suit proceedings** and to send order for execution to courts within the local limits
  - A) In case of a company –where the registered office of the company is situated
  - B) In case of any other person- where the person resides or carries on business or personally works for gains



# Appellate Tribunal (Section 111)

For the purposes of discharge of the functions shall be vested with the same powers in the Civil Court

- a) Discovery and inspection
- b) Enforcing the attendance of any person and examine him an oath
- c) Receiving evidence on affidavits
- d) Requisitioning any public record or documents or a copy of such record or document from any office
- e) compelling the production of books of account and other documents
- f) Dismissing a representation for default or deciding it *ex parte*
- g) Issuing commission

# Appeal to the Appellate Tribunal (Section 112)

- Person aggrieved by an order passed against him by the Appellant or Revisional authority under CGST, SGCT & UGST can file an appeal
- File an appeal within 3 months from the date of communication of order
- The Appellant Tribunal at its discretion can refuse to admit an appeal where the tax or input tax credit involved is less than Rs 50 thousand
- A Memorandum of Cross-objections can be filed by the respondent within 45 days, even if no appeal has been preferred
- The Appellant Tribunal can admit an appeal or cross-objections after the expiry of the period subject to sufficient cause is shown.

# Appeal to the Appellate Tribunal (Section 112)

## Mandatory pre-deposit for filing appeal

- The full amount of tax, interest, fine, fee and penalty as admitted by appellant and 20% of the disputed amount of the challenged order in addition to the amount paid for appeal to the CIT(A)
- The Recovery proceedings for the balance amount shall be deemed to stay

# Department Appeal to the Appellate Tribunal (Section 112(3) & (4) )

- The Commissioner at its own motion or on request from the Commissioner of State or Union Territory call for and examine the record of Appellant or Revisional Authority
- If he is not satisfied with the legality or propriety of the order
- Direct the officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date of on which it has been passed

# Order of the Appellate Tribunal (Section 113)

- Pass order after giving an opportunity of hearing
- The order can confirm, modify or annul the decision or order appealed against or may refer back the case to the relevant authority with directions for fresh adjudication or decision after taking additional evidence.
- Adjournment to be granted after recording of reasons in writing, but should not exceed 3 times
- The Appellant Tribunal as far as possible hear and decide the matter within 1 year

# Rectification of order by the Appellant Tribunal

- An application for rectification of error, or any other purpose, or restoration of appeal or application can be filed
- The Appellant Tribunal on its own or on application rectify any error apparent on the face of the record
- No order enhancing the assessment or reducing a refund or input tax credit or increasing the liability shall be passed unless an opportunity of hearing has been granted

# Appeal to the High Court (section 117)

- A person aggrieved by any order passed by Appellant Tribunal may file an appeal to the HC, dealing with Substantial questions of Law.
- The HC has the power to deal with substantial question of law not formulated after recording reasons
- The HC can decide any issue not determined or wrongly determined by the Appellant Tribunal
- The Judgement of the HC shall be given effect to by either side on the basis of a certified copy
- The Code of Civil Procedure, 1908 relating to appeals to the High Court shall apply

# Appeal to the High Court (section 117)

## Period of limitation for filing appeal

- 180 days from the date of receipt of the appellant tribunal order
- May entertain an appeal after the expiry of the said period if it is satisfied by sufficient cause for not filing it within the period.

## Constitution of the High Court

- The appeal to be heard by a bench of not less than two judges of the HC and shall be decided by the opinion of the majority of Judges
- Where no Majority then the judges shall refer the point of law upon which they differ to be heard by one or more judges
- The Judges shall determine the issues based on the majority which shall include the judges that first heard the matter



# Appeal to the Supreme Court (section 118)

- An appeal can be filed (by either side) to the Supreme Court against an order passed by the High Court or
- When the High Court on its motion consider it a fit one for appeal to the supreme court
- From any order passed by the Appellate Tribunal, (direct) appeal will lie to the Supreme Court in
  1. *a matter where two or more States, or a State and Center, have a difference of views regarding the treatment of a transaction(s) being intra-State;*
  2. *a matter where two or more States, or a State and Center, have a difference of views regarding the place of supply.*
- The code of Civil Procedure, 1908 Relating to Appeal to the Supreme Court shall apply.

# Sum dues to paid notwithstanding appeal (Section 119)

- Notwithstanding that an appeal has been referred to the High Court or Supreme Court, the sum due as a result of an order passed by the Appellant Tribunal or High Court shall be payable.

# Appeals not to be filed by the Department in regards to Monetary limit (Section 120)

- The Board on the recommendation of the Council, fix monetary limits to regulate the filing of an appeal in a higher appellate forum.
- Such monetary limits do not preclude the department from filing an appeal in any other case involving the same or similar issues or questions of law.
- Not filing an appeal because of such monetary limits does not mean that the dispute at hand is to be considered settled, nor does such an order become a binding precedent.
- The Appellant Tribunal or Court shall have regards to none filing of appeal due to the Monetary limit

# Non- Appealable decisions and orders (Section 121)

No appeal against any decision or passed by an officer of central tax if they relate to the following matter;-

- An order to transfer the proceedings from one officer to another officer
- An order to seize or retain books of account and other documents; or
- An order sanctioning prosecution under the Act; or
- An order allowing payment of tax and other amount in instalments

# Constitutional Remedies

- All actions of the government are subject to Judicial scrutiny before the High Court & Supreme Court, irrespective of the Provision of the Statute
- The judicial power is conferred by the Constitution itself and cannot be curtailed by any legislation
- **UOI v/s West Coast Paper Mills 135 STC 265 (SC)**

Appeal should be filed even if Writ/SLP is filed as it may become time-barred

# Demand and Recovery

- Determination of tax not paid/short paid, erroneously refunded input tax credit, wrongly availed and utilised other than fraud or wilful misstatement or suppression of facts (Section 73)
- Determination of tax not paid/short paid, erroneously refunded input tax credit, wrongly availed and utilised on fraud or wilful misstatement or suppression of facts (Section 74)

# Demand and Recovery

- Issue show cause notice why he should not pay the amount specified in the notice along with interest and a penalty that may be leviable (Section 73(1)) or penalty equivalent to the tax (section 74(1))
- Notice to issue 3 or 6 months prior to the time limit for passing the order under section 73 (2) and 74(2) respectively.
- Order to passed within 3 or 5 years of the filing of annual returns in normal case section 73(10) and fraud or suppression case section 74(10) respectively.
- If the order is not issued in time, the adjudication proceedings shall be deemed to be concluded

# Overview of Section 73

Section	Provisions relevance
Section 73(1)	Issuance of Show cause notice (SCN)
Section 73(2)	Time Period for issuance of SCN – at least 3 months prior to the time limit of passing order
Section 73(3)	Services of a statement for Subsequent period, if not covered in notice served under sub-section (1)
Section 73(4)	Statement issued deemed to be notice if ground relied upon are the same
Section 73(5)	Payment of amounts before service of SCN – ascertained by taxpayer or officer
Section 73(6)	No SCN, if tax or penalty is paid under sub-section (5)
Section 73(7)	Notice can be issued, if amount paid is less than payable (ascertained by the officer)
Section 73(8)	No Penalty, if tax and interest paid within 30 days of SCN
Section 73(9)	Determination of tax, interest and penalty equivalent to 10% of tax or Rs 10,000/- whichever is higher
Section 73(10)	Issue of notice within 3 years
Section 73(11)	Penalty levied, if self-assessed tax not paid within 30 days of due day of payment of such tax



# Analysing section 73 of the GST

- Where it appears to the proper officer that
  - A) Any tax not paid or short paid or
  - B) Erroneous refunded or
  - C) Where input tax credit has been wrongly availed or utilisedNot being a case of fraud or willful misstatement or suppression of facts to evade tax -
- The proper officer shall server a SCN at least 3 months prior to the time of passing of the order, asking why the amount specified in the notice along with interest under section 50 Shall not be paid
- Issuance of Statement to cover those taxes, refunds or input tax credit that is not covered by Sub-section (1) *subject to the condition that the ground relied are the same as earlier notice.*

# Analysing section 73 of the GST

- SCN not to be issued if tax along with the interest is paid before the issue-
- If an officer is of the opinion that tax are not paid in full, then issue of SCN- as provided in section 73(1) in respect of such amount which fall short.
- The person chargeable with tax pays the tax along with interest within 30 days of issue of SCN under section 73(1) & (3), no penalty and all proceedings in respect of the said notice shall be deemed to be concluded
- No penalty waiver when sequent notice is issued under section 73(7)
- The expression “all proceedings in respect of the said notice shall not include proceedings under section 132”- Explanation 1 to Section 74
- Section 132 – provides a list of offence which is punishable by improvement and/or fine.

# Analysing section 73 of the GST

- Determination of tax, interest and penalty equivalent to 10% of tax or Rs 10,000/- whichever is higher after providing the taxpayer with an opportunity of hearing
- Penalty payable, if self-assessed tax or the amount collected as tax is not paid within 30 Days from the due date of payment of such tax.

# Overview of Section 74

Section 74(1)	Issuance of Show cause notice (SCN)
Section 74(2)	Time Limit for issue of SCN – 6 months before order
Section 74(3)	Services of a Statement for Subsequent period
Section 74(4)	Statement issued deemed to be notice if ground relied upon are the same
Section 74(5)	Payment of tax, interest and 15% of tax as penalty, before services of SCN
Section 74(6)	No SCN, if tax, interest and penalty paid under sub-section (5)
Section 74(7)	Notice still can be issued, if amount settled is less of payable
Section 74(8)	Reduce penalty to 25% is payable, if tax and interest paid within 30 days of SCN
Section 74(9)	Determination of tax, interest and penalty equivalent on passing of the order
Section 74(10)	Issue of notice within 5 years
Section 74(11)	Penalty levied, if self-assessed tax not paid within 30 days of due day of payment of such tax

# Analysing section 74 of the GST

- Similar to Section 73, but would apply only when there is a fraud, any wilful misstatement or Suppression of facts.
- Difference between the Sections

	Section 73	Section 74
Time for SCN	3 Months	6 Months
Time for passing order	3 years from filling of the annual returns or from the date of erroneous refund	5 years from Filing of the annual return or from the date of erroneous refund
Penalty	No penalty, Payment of amounts before service of SCN	Penalty equivalent to 15% if payment of amounts before service of SCN
	No penalty, when payment made within 30 days	Penalty equivalent to 25%, when payment made within 30 days
	Penalty, equivalent to 10% of tax or Rs 10,000/- whichever is higher on passing of the order	Penalty, to be determined on passing of the order

# Analysing section 74 of the GST

- The term “suppression” is defined in Explanation 2 to Section 74
- “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 a proper officer.
- Only Suppression has been defined, no definition of what constitutes “fraud” or “wilful- Misstatement.”

# Case Laws – Suppression should be Wilful

- **Rainbow Industries v/s CCE 1994 74 ELT 3(SC)**

In order for the Extended time to apply, two ingredients must be present- Wilful Suppression and intention to evade duty

- **Tamil Nadu Housing Board v/s CCE 74 ELT 9 (SC)**

The powers to extend period is an exceptional power and hence need to be constructed strictly

- **Nestler Boilers (P) Ltd v/s Collector 50 ELT 613 (CEGAT)**

If all facts have been disclosed to department, extended period is not applicable

# Case Laws – Suppression should be Wilful

- **Collector v/s Chemphar Drugs 40 ELT 276 (SC)**

Mere inaction or mere non-disclosure is not suppression of facts-conscious or deliberate withholding

- **CCE v/s Ballarpur Industries Ltd 11 STT 6(SC)**

Mere omission to give correct information did not constitute suppression unless that omission was made willfully to evade duty

- **CCE v/s Ranka Wine 322 ELT 410(Sc)**

No suppression of facts if facts which are not required are to be disclosed are not disclosed



# Case Laws – Suppression should be Wilful

- **Padmini Products v/s CCE 43 ELT 195(SC)**

No Suppression of facts if assessee had a bonafide belief

- **Pushpam Pharmaceuticals Co v/s CCE 78 ELT 401(SC)**

No Suppression if department aware of the facts

- **Cosmic Dye Chemical v/s CCE 95 STC 604(SC)**

‘Wilful’ means ‘with intent to evade duty’. A statement will not be misstatement only because full facts were not disclosed.

- Penalty referred to in Section 73 and/or 74 are nothing but penalty imposable under provisions of Section 122(2)(a) & (b) of the CGST Act, 2017 respectively
- While issuing notice under section 73(1) and/or 74(1), for penalty, a reference of provisions of Section 122(2)(a) & (b) should be given.

# Tax collected but not paid to the Government

## – Section 76

- Amount collected as tax from the customers “representing the tax” under the Act
- Shall pay to the account of the Government, irrespective of whether the supplies are taxable or not.
- The officer to issue a show cause notice for the amounts collected and penalty equivalent to the amount.
- The officer after providing an opportunity to be heard, pass orders within 1 year of issue of notice
- If surplus after passing of the order, refund to the person that has borne the incidents of tax, in accordance with Section 54
- Passing of the order may be subject to stay by Court, Tribunal or Appellate authority

# Tax wrongfully collected and paid to Central Government or State Government (Section 77)

- A registered person that has paid central tax/state tax or central Tax/union territory tax on a transaction considered as intra-state supplies that are subsequently held to be inter-state supplies
- The application of refund can be made as per section 54.

# Recovery action immediately after completion of three months (section 78)

- Any amount payable in pursuance of an order passed shall be paid by such person within 3 months, failing which recovery proceedings should be initiated.
- The period shall start from the date of services of the order
- To safeguard the interest of the revenue, the officer may recover the amount before 3 months subject to recording its reasons in writing.

# Recovery of Tax (Section 79)

- Provides for various modes of recovery, inter alia, includes;
  - 1) Deduct the amount payable (refund or adjust the Input tax credit)
  - 2) Detaining and selling any goods belonging to such person
  - 3) Issue notice in writing to the third parties from whom money is due to such person
  - 4) Distrain any movable or immovable

# Payment of Tax and Other Amount in Instalment (section 80)

- An application to be filed by the Taxpayer to the Commissioner
- The Commissioner may consider the application by recording reasons in writing allow the extend the time for payment or allow payment in instalment
- Such amount shall not include the due liability under self-assessed in the return
- The instalments shall not exceed 24 months
- Any default in instalments the entire amount is due and payable

# Transfer of Property to be void in certain Case (section 81)

- After any amount has become due, the person creates a charge on or parts of the property belonging to him or in his possession by way of sale, mortgage, exchange or any other mode of transfer
- With the intention of defrauding the government
- Such transfer would be considered void



# First Charge on the Property of the Taxable person (section 82)

- Any Liability under the Act, shall be the first charge on the property
- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016

# Provisional Attachment of Property for a Period of one year (section 83)

- During the pendency of any proceedings under certain provisions of the Act
- The commissioner in the interest of protecting the Government revenue, by order in writing, attached provisional any property or bank accounts
- Cease to effect after one year from the date of order for provisional attachment

# Continuation and validation of Certain Recovery proceedings; another demand notice for enhanced dues (Section 84)

- When notice for recovery of government dues is served upon the taxable person or any other person and
- Appeal or revision application is filed or any other proceedings against government dues
- An enhancement during such appeal, revision or other proceedings, the commissioner shall serve a notice of demand in respect of the amount by enhanced
- The earlier notice of demand served upon him before the disposal of the proceedings shall continue.
- In case of reduction, no fresh notice of demand
- The commissioner to intimate the reduction to the Taxpayer and to the appropriate authority with whom recovery proceedings are pending
- The recovery proceedings based upon the earlier notice of demand shall continue subject to the reduction