

Goods & Services Tax

Central Goods & Services Tax Act, 2017

*“Handling of Notices & Adjudication
under GST”*

Association of Professionals (AOP)

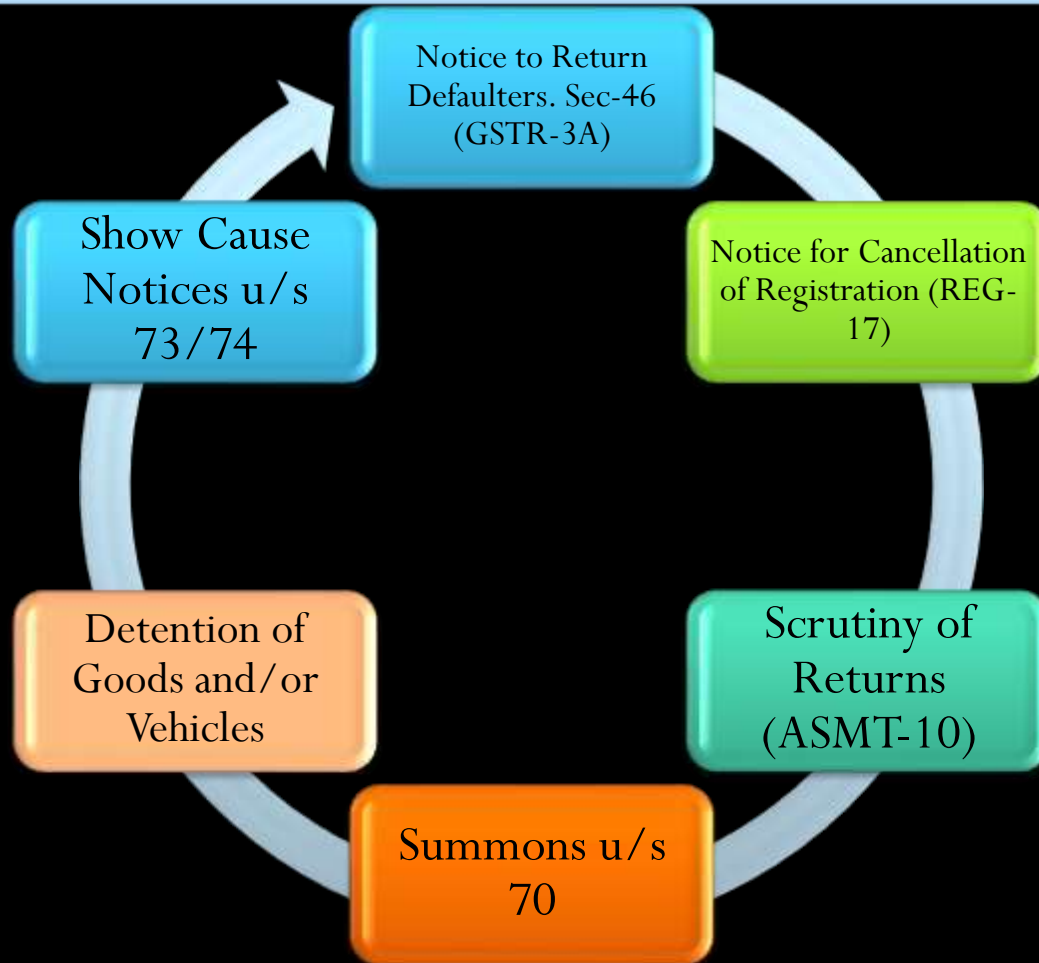
Monday, 24th August, 2020

CA Rohit Vaswani,

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Handling Notices & Adjudication



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Notice to return defaulters. Sec.46

- **Notice to return defaulters.**
- **Sec-46.** Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.
- **Rule-68. Notice to non-filers of returns.-**
- A notice in **FORM GSTR-3A** shall be issued, electronically, to a registered person who fails to furnish return under section 39 or section 44 or section 45 or section 52.

Cancellation or suspension of registration.

- Sec.29 (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—
 - (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
 - (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
 - (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
 - (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
 - (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Revocation of cancellation of registration.

- Sec-30. (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, **may apply to such officer for revocation of cancellation of the registration** in the prescribed manner **within thirty days from the date of service of the cancellation order.**
- (2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:
- Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.
- (3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Revocation of cancellation of registration.

- **Rule-23 (1)** A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in **FORM GST REG-21**, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
- Provided that **no application for revocation shall be filed**, if the registration has been cancelled for the failure of the registered person to furnish returns, **unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid** along with any amount payable towards interest, penalty and late fee in respect of the said returns.

Revocation of cancellation of registration - Filing of returns after revocation

- Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person **within a period of thirty days from the date of order of revocation of cancellation of registration**:
- Provided also that **where the registration has been cancelled with retrospective effect**, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration **within a period of thirty days** from the date of order of revocation of cancellation of registration.

(Removal of Difficulties) Order, 2020 - ORDER No. 01/2020 - Central GST (CGST) Dated 25.06.2020

- CBIC has also allowed filing revocation of cancellation application beyond 30 days to avail benefit up to 30th September 2020.
- It is hereby clarified that for the purpose of calculating the period of thirty days for filing application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act for those registered persons who were served notice under clause (b) or clause (c) of sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and where cancellation order was passed up to 12th June, 2020, the later of the following dates shall be considered:-
 - a) Date of service of the said cancellation order; or
 - b) 31st day of August, 2020.



Power to Arrest

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Power to summon persons to give evidence and produce documents.

- **Sec-70.** (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

Power to Arrest

Sec.69/132

Where the Commissioner has reasons to believe that a person has committed any specified offence, he may, by order, authorise any officer of central tax to arrest such person

Supply without
issue of invoice

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graph TD; A[Supply without issue of invoice] --- B[Issue of Invoice leading to wrong ITC or refund]; A --- C[Avails ITC using above Invoice]; A --- D[Collects tax but fails to pay beyond 3 months from due date]
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Issue of Invoice
leading to wrong
ITC or refund

Avails ITC using
above Invoice

Collects tax but fails to
pay beyond 3 months
from due date

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Power to Arrest

Sec.132

Where amount of tax evasion exceeds 5 Crore

- With imprisonment of a term which may extend to 5 years and with fine

Where amount of tax evasion exceeds 2 Crore but does not exceed 5 crore

- With imprisonment of a term which may extend to 3 years and with fine

Power to Arrest

Sec.69/132

Where a person has been arrested where imprisonment is up to 5 years

the officer authorised to arrest the person shall inform such person of the grounds of arrest

and produce him before a Magistrate within 24 hours

Power to Arrest

Sec.69/132

Subject to the provisions of the Code of Criminal Procedure, 1973,— in case of non-cognizable and bailable offences

he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate

the DC or the AC shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers as an officer-in-charge of a police station

Judicial Pronouncements:

- **SUBHASH CHANDER VERSUS STATE OF PUNJAB AND ANOTHER Dated 07.08.2020: 2020 (8) TMI 212 - PUNJAB AND HARYANA HIGH COURT**
- 3. The allegations, in nutshell, are that the petitioner had availed Input Tax Credit (ITC) to the tune of about ₹ 10.81 crores on the basis of invoices without there being actual sale of goods.
- 7. Learned counsel for the petitioner has submitted that since petitioner have undergone custody of a period of about 10 months and that the maximum sentence provided for the offence in question is 5 years, therefore, no useful purpose would be served by detaining the petitioner behind bars as the trial in any case is not likely to be immediately concluded since proceedings of the trial are virtually at a stand still.
- 9. I have considered rival submissions addressed before this Court. Keeping in view the aforesaid custody period and also the fact that the maximum sentence provided for the offence in question is 5 years and that the vires of the Act is itself under challenge, **the petition merits acceptance and is hereby accepted**. The interim directions dated 20.7.2020 are hereby made absolute on the same terms and conditions.

Judicial Pronouncements:

- AMIT BOTHRA, ASHOK DAGAR VERSUS STATE OF MP Dated 27.07.2020: 2020 (8) TMI 40 - MADHYA PRADESH HIGH COURT
- Petition for Granting Bail
- Clandestine manufacturing and sale of pan masala without payment of GST - alleged evasion of tax –
- It is argued that the petitioners have been falsely implicated in the case.
- On careful consideration of nature and gravity of the allegation made against the petitioners and the specific evidence collected in respect of these allegations, elaborate discussion of which would not be apt as it may adversely affect the interest of either party, the specific facts put-forth by the learned senior counsels for the petitioners and their reply and other facts and circumstances of the case, in the considered opinion of this court, **the case for granting bail is made out**. Therefore, without commenting on the merits of the case, both the petitions stand allowed.

Judicial Pronouncements:

- AMIT BERIWAL VERSUS STATE OF ODISHA Dated 27.07.2020 2020 (8) TMI 24 - ORISSA HIGH COURT
- Bail Application
- GST fraud - creation of several dummy and non-existent entities to avail bogus Input Tax Credit (ITC)
- There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the touchstone of its own generic facts and individual merits.
- This Court is well aware of the complications thrown in by the new GST regime and the problems posed in its implementation. It seems a countrywide cartel specializing in defrauding the GST system is operating to bring the economy to its knees.
- These complications created by the unscrupulous fraudsters, one would fear, could lead to arrest of innocent businessmen and traders.
- This Court is not inclined to release the accused Petitioner on bail at this stage - Bail application dismissed.

Assessment, Audit & Demands

- Sec. 59-64
- Rule. 98-100

Assessment



- Sec. 65-66
- Rule. 101-102

Audit

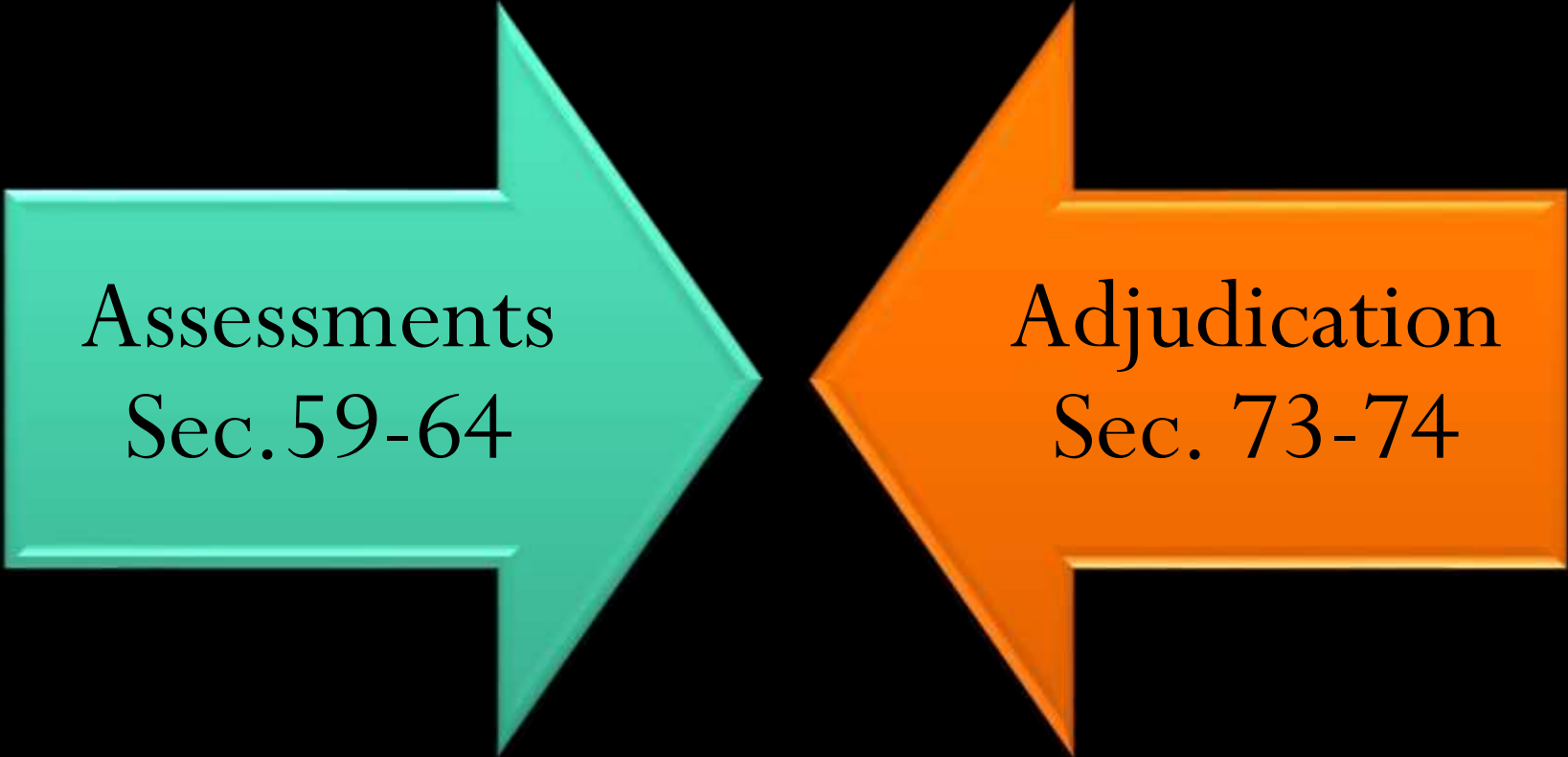


- Sec. 73-77
- Rule. 142

Demands



Assessment Vs. Demands



Assessments
Sec. 59-64

Adjudication
Sec. 73-74



Assessment

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“Assessment” defined

Sec.2(11)

“assessment” means determination of tax liability under this Act and includes

self-
assessment,
re-
assessment,

provisional
assessment,
summary
assessment

and best
judgment
assessment

Assessment

(Sec.59-64)

Self
Assessment

Provisional
Assessment

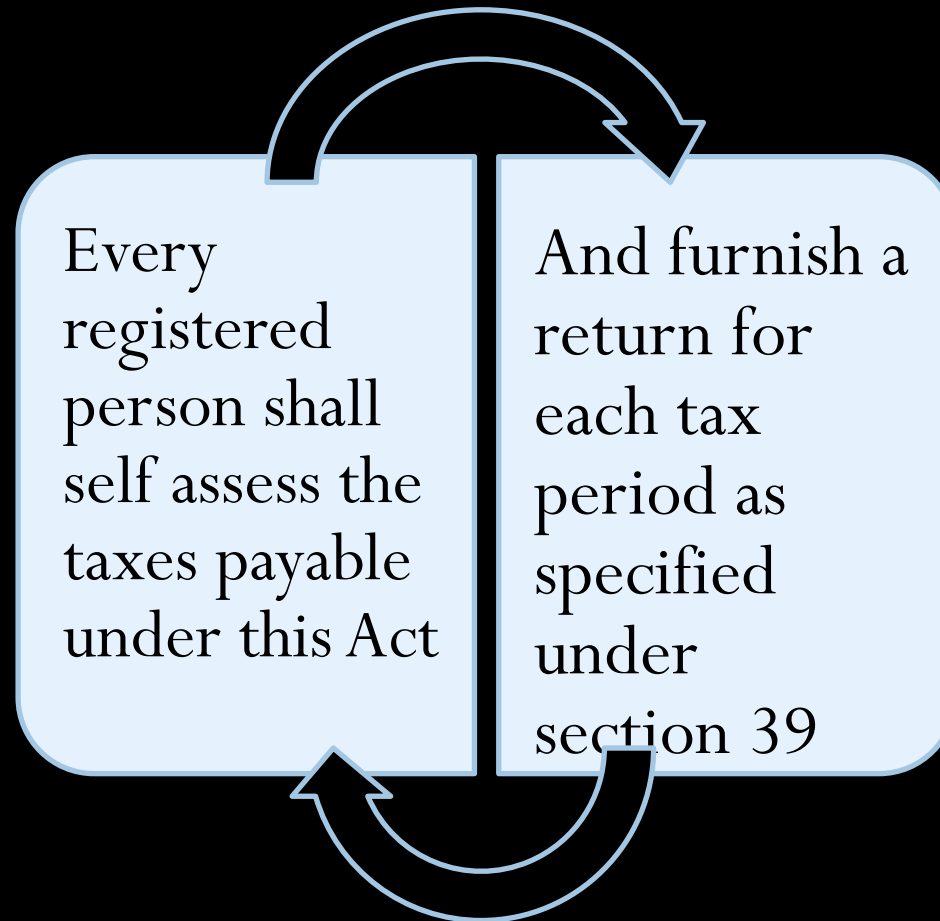
Scrutiny of
Returns

Best Judgment
Assessment

Summary
Assessment

Self Assessment

Sec.59



**PROVISIONAL
TAX**

Provisional Assessment

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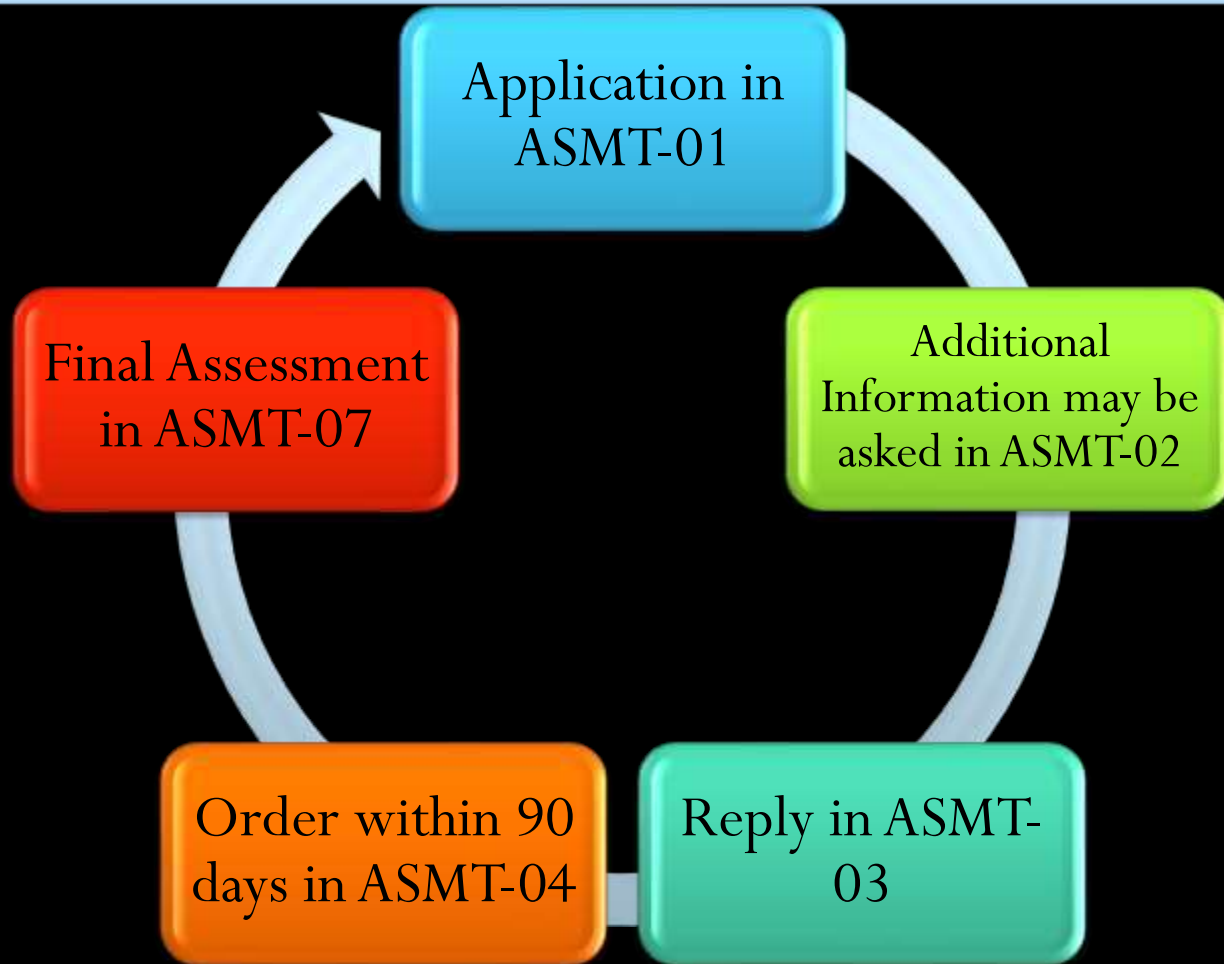
Provisional Assessment- Sec.60

where the taxable person is unable to determine the value of Supply

Unable to determine the rate of tax applicable

Request for payment of tax on provisional basis

Process of Provisional Assessment



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A person in a black suit is holding a magnifying glass over a document on a desk. The document appears to be a tax return form. There are other papers and a calculator on the desk. The background is a blurred office setting.

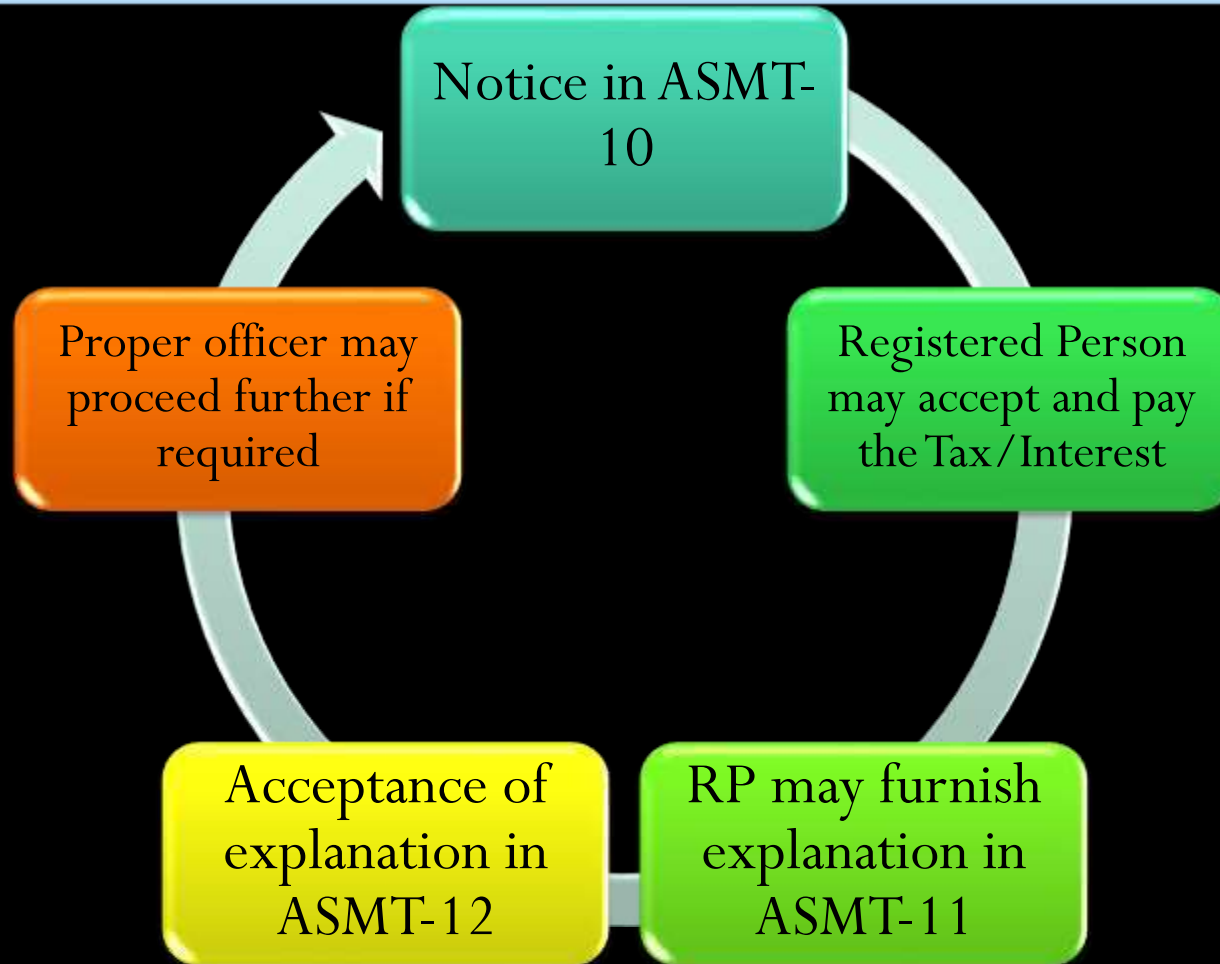
Scrutiny of Returns under GST

Section-61

Scrutiny of Returns

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Scrutiny Assessment Process



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Scrutiny of Returns

Sec.61/Rule.99



The proper officer may scrutinize the return and related particulars furnished by the registered person

To verify the correctness of the return and inform him of the discrepancies noticed, if any.

The proper officer shall issue a notice to the said person in FORM ASMT-10, informing him of such discrepancy and seeking his explanation

Scrutiny of Returns

Sec.61/Rule.99

Quantification of tax/interest

- An also where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy in ASMT-10

Acceptance by the registered person

- The registered person may accept the discrepancy mentioned in the notice and pay the tax/ interest accordingly

Explanation by the registered person

- The registered person may furnish an explanation for the discrepancy in FORM ASMT-11 to the proper officer

Scrutiny of Returns

Sec.61/Rule.99

Acceptance by the proper officer

- In case the explanation is found acceptable, the registered person shall be informed in Form ASMT-12

If no explanation furnished in allowed time

- In case no satisfactory explanation is furnished within time allowed, the proper officer may initiate appropriate action

If Registered Person fails to take corrective measure

- where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return the proper officer may initiate appropriate action

Scrutiny of Returns

Sec.61/Rule.99



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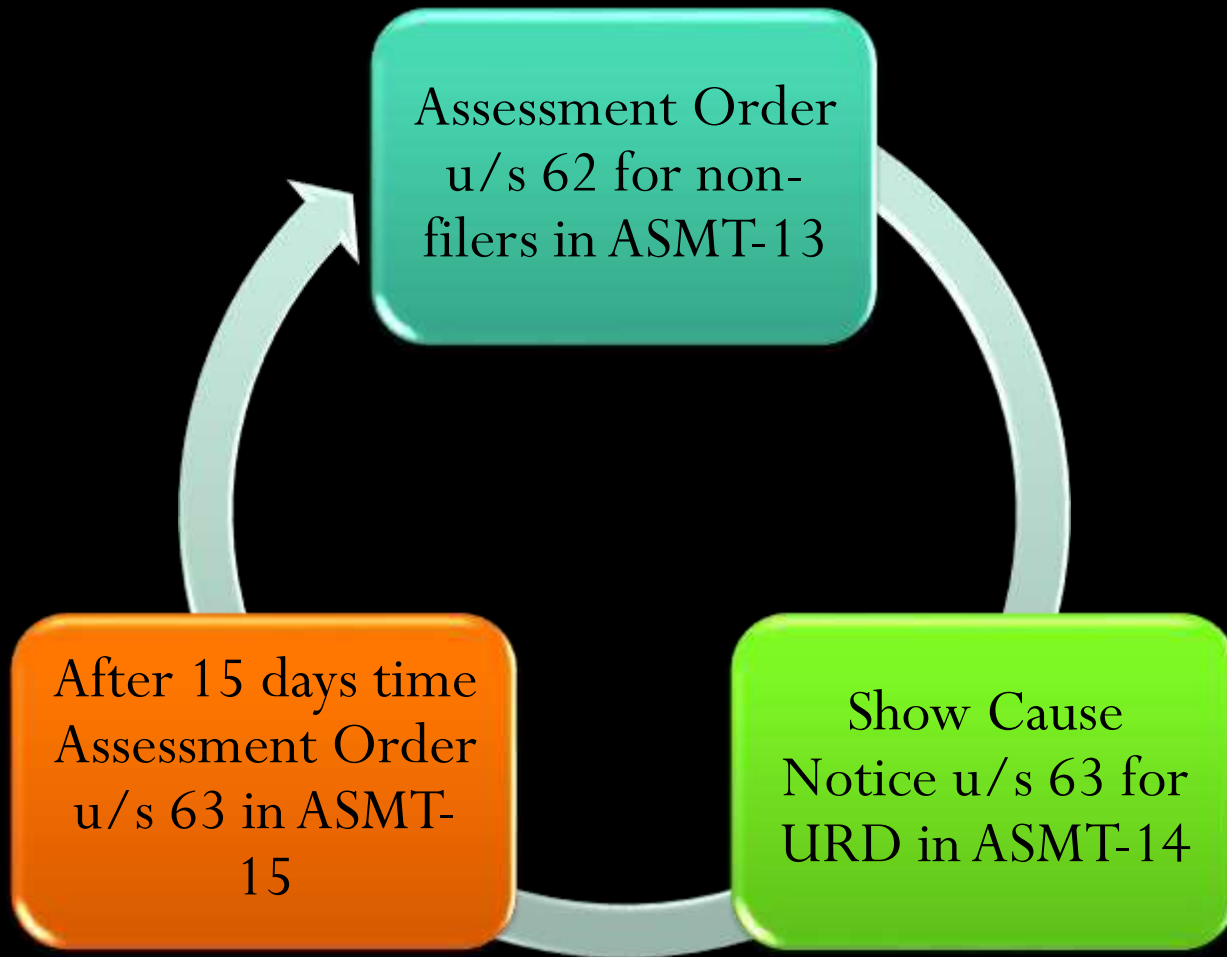


Best Judgment Assessment

(Sec.62 & 63)

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Best Judgment Assessment Process



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Best Judgment Assessment

Sec.62 & 63 / Rule.100

Assessment of non-filers of return

- where a registered person **fails to furnish the return** under section 39 or section 45
- even after the service of a notice under section 46
- Notwithstanding anything to the contrary contained in section 73 or section 74

Assessment of unregistered persons

- where a taxable person **fails to obtain registration** even though liable to do so
- or whose registration has been cancelled u/s 29 (2) but who was liable to pay tax
- Notwithstanding anything to the contrary contained in section 73 or section 74

Best Judgment Assessment

Sec.62 & 63 / Rule.100

Assessment of non-filers of return

- the proper officer may proceed to assess the tax liability of the said person **to the best of his judgement**
- taking into account all the relevant material which is available or which he has gathered

Assessment of unregistered persons

- the proper officer may proceed to assess the tax liability of such taxable person **to the best of his judgment** for the relevant tax periods and issue an assessment order
- no such assessment order shall be passed without giving the person an **opportunity of being heard**

Best Judgment Assessment

Sec.62 & 63 / Rule.100

Assessment of non-filers of return

- Time Limit: **within a period of five years from** the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates
- If valid return is furnished **within 30 days** from the date of order, the said assessment order shall be deemed to have been withdrawn
- Assessment Order in Form ASMT-13

Assessment of unregistered persons

- Time Limit: **within a period of five years from** the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates
- ASMT-14 notice to be issued containing **the grounds on which assessment is proposed**
- Assessment Order in Form ASMT-15

SUMMARY



Summary Assessment

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Summary Assessment in certain special cases

Sec.64

To protect the interest of revenue

- If proper officer has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue

On any evidence showing a tax liability

- The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess (ASMT-16) the tax liability of such person

Summary Assessment in certain special cases

Sec.64

Where taxable person is not ascertainable for Goods

- the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax etc.

Application to withdraw summary assessment (ASMT-17)

- On application by taxable person within 30 days from receipt of summary assessment order Or on his own motion the proper officer may withdraw such order and follow the procedure laid down in section 73 or section 74

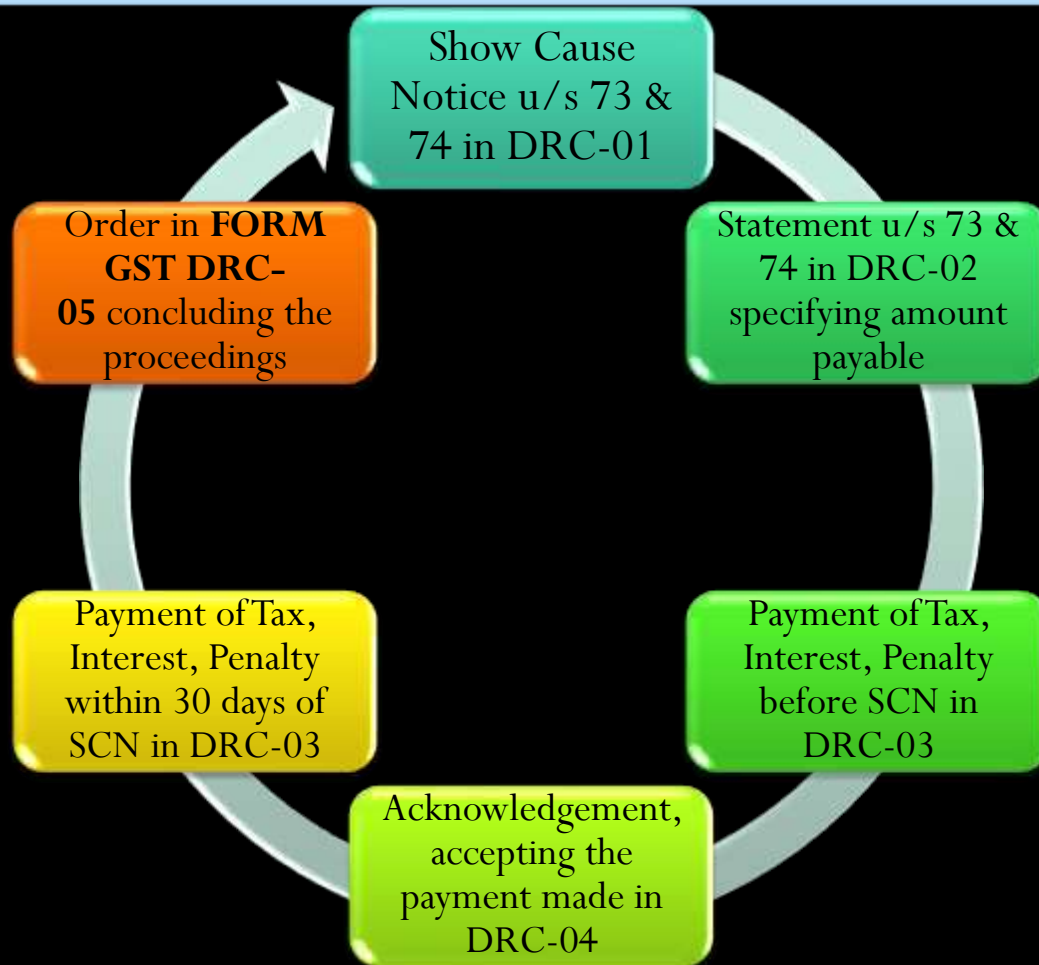


DEMAND & RECOVERY UNDER GST

“Adjudication of Demand”

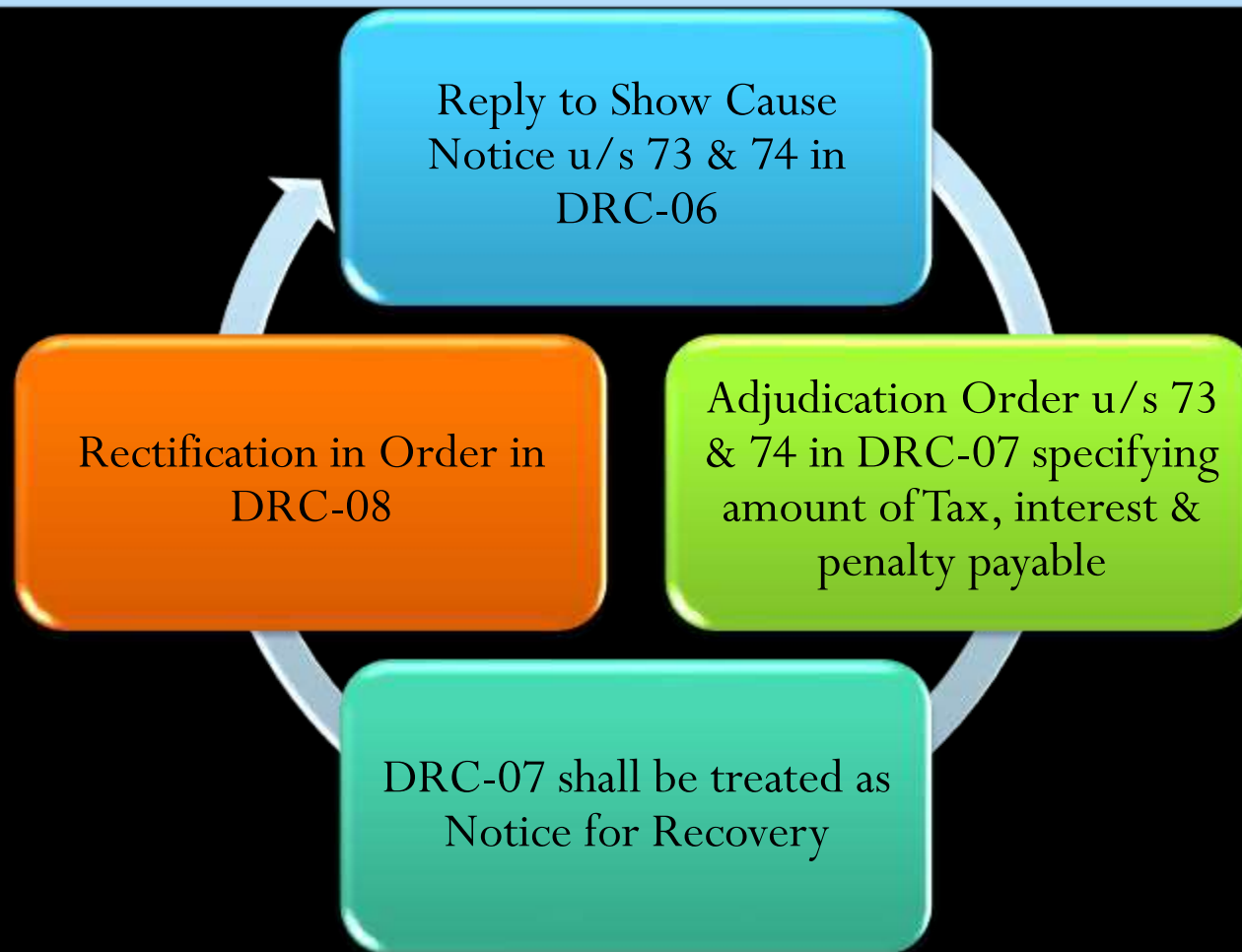
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Adjudication of Demand Process



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Adjudication of Demand Process



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Adjudication of Demand

Section-73

- For Reasons other than-
 - i. Fraud
 - ii. Any willful misstatement
 - iii. suppression of facts to evade tax

Section-74

- By reason of-
 - i. Fraud
 - ii. Any willful misstatement
 - iii. suppression of facts to evade tax

Adjudication of Demand

Sec. 11A of the Central Excise Act, 1944

- Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, by the reason of-
 - (a) fraud; or
 - (b) collusion; or
 - (c) any wilful mis-statement; or
 - (d) suppression of facts; or
 - (e) contravention of any of the provisions of this Act or of the rules made thereunder **with intent to evade payment of duty,**

Sec. 73/74 of the CGST Act, 2017

- Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised **by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax,**

Explanation-2

- 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.

“Fraud”

- CC Vs Essar Oil Ltd (2004) 172 ELT 433 (SC)

“By Fraud is meant an intention to deceive, whether it is from any expectation of any advantage to party itself or from the ill will towards other is immaterial. ‘Fraud’ involves two elements, deceit and injury to the person deceived. Injury will include any harm whatever cause to any person in body, mind, reputation or such others.”

- Devendra Kumar Vs State of Uttaranchal (2009) 9 SCC 363

“Misrepresentation itself amounts to fraud”

- Meghmala Vs G Narasimha Reddy (2010) 8 SCC 383

“Fraud and Justice never dwell together”

“Willful Misstatement”

- Cosmic Dye Chemical Vs CCE (1995) 95 STC 604 (SC)

Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., **intent to evade duty is built into these very words**. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "**wilful**" preceding the words "**mis-statement or suppression of facts**" which means **with intent to evade duty**.

The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "**with intent to evade payment of duty**". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful.

“Suppression of Facts”

- **NESTLER BOILER PVT. LTD. VERSUS COLLECTOR OF CENTRAL EXCISE-** 1990 (50) E.L.T. 613 (Tribunal)

Therefore, when declaration was filed with specification, description of blowers, and one such blower was also cleared under a gate-pass under T.I. 68 as late as 14-11-1982, on payment of duty, **the allegation of suppression with intent to evade payment of duty cannot be levelled against them.** The Supreme Court decision in Collector of Central Excise v. Chemphar Drugs & Liniments, 1989 (40) E.L.T. 276 is applicable to their case. As such the demand has to be restricted to the period of 6 months only.

Reasons for issue of notice

Section-73-

- Where it appears to the proper officer that-
 - i. any tax has not been paid
 - ii. Short paid
 - iii. erroneously refunded
 - iv. ITC has been wrongly availed or utilised

Section-74

- Where it appears to the proper officer that-
 - i. any tax has not been paid
 - ii. Short paid
 - iii. erroneously refunded
 - iv. ITC has been wrongly availed or utilised

Show Cause Notice

Section-73-

- show cause as to why-
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty leviable under the provisions of this Act or the rules made thereunder

Section-74

- show cause as to why-
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty **equivalent to the tax specified in the notice**

GODAVARI COMMODITIES LTD., RANCHI. VERSUS THE UNION OF INDIA: 2019 (12) TMI 275 - JHARKHAND HIGH COURT Dt. 03.12.2019

- The petitioner is aggrieved by the **letter of intimation for payment of interest on delayed payment of GST, dated 6.2.2019**, issued by the respondent No.3, Superintendent of CGST & CX Range-I, Ranchi, as contained in Annexure-3 to the writ application, whereby the liability of amount of ₹ 11,58,643/- has been imposed upon the petitioner, as short paid interest for not depositing the tax within time.
- It is pointed out by learned counsel for the CGST that the petitioner Company had credited the amount of tax and interest thereon in their electronic cash ledger beyond the prescribed date of payment, but the actual payment in the Government account was made even later, **and the interest has been paid by the petitioner Company, only till the date and the amount was credited in their electronic cash ledger.**
- In the present case, though it is submitted by learned counsel for CGST that since the tax was paid, Section 73 (1) of the Act shall not be attracted in the case of the petitioner, but the fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly it is a case of tax not being paid, within the period prescribed, or when due. **In that view of the matter, we are unable to accept the contention of learned counsel for CGST that no show-cause notice was required to be given in this case.**

Time Limit for Issue of Notice

Section-73

- The proper officer shall issue the notice under sub-section (1) at least 3 months prior to the time limit specified in sub-section (10) for issuance of order

Section-74

- The proper officer shall issue the notice under sub-section (1) at least 6 months prior to the time limit specified in sub-section (10) for issuance of order

Time Limit for Issue of Order

Section-73

- The proper officer shall issue the Order within 3 years from the due date for furnishing of annual return for the relevant financial year

Section-74

- The proper officer shall issue the Order within 5 years from the due date for furnishing of annual return for the relevant financial year

Where show cause has been issued for earlier period

Section-73

- The proper officer may serve a **Statement** and shall be deemed to be Notice, subject to the condition that same grounds for the earlier period.

Section-74

- The proper officer may serve a **Statement** and shall be deemed to be Notice, subject to the condition that same grounds for the earlier period.

Explanation-1 (Section 73 & 74)

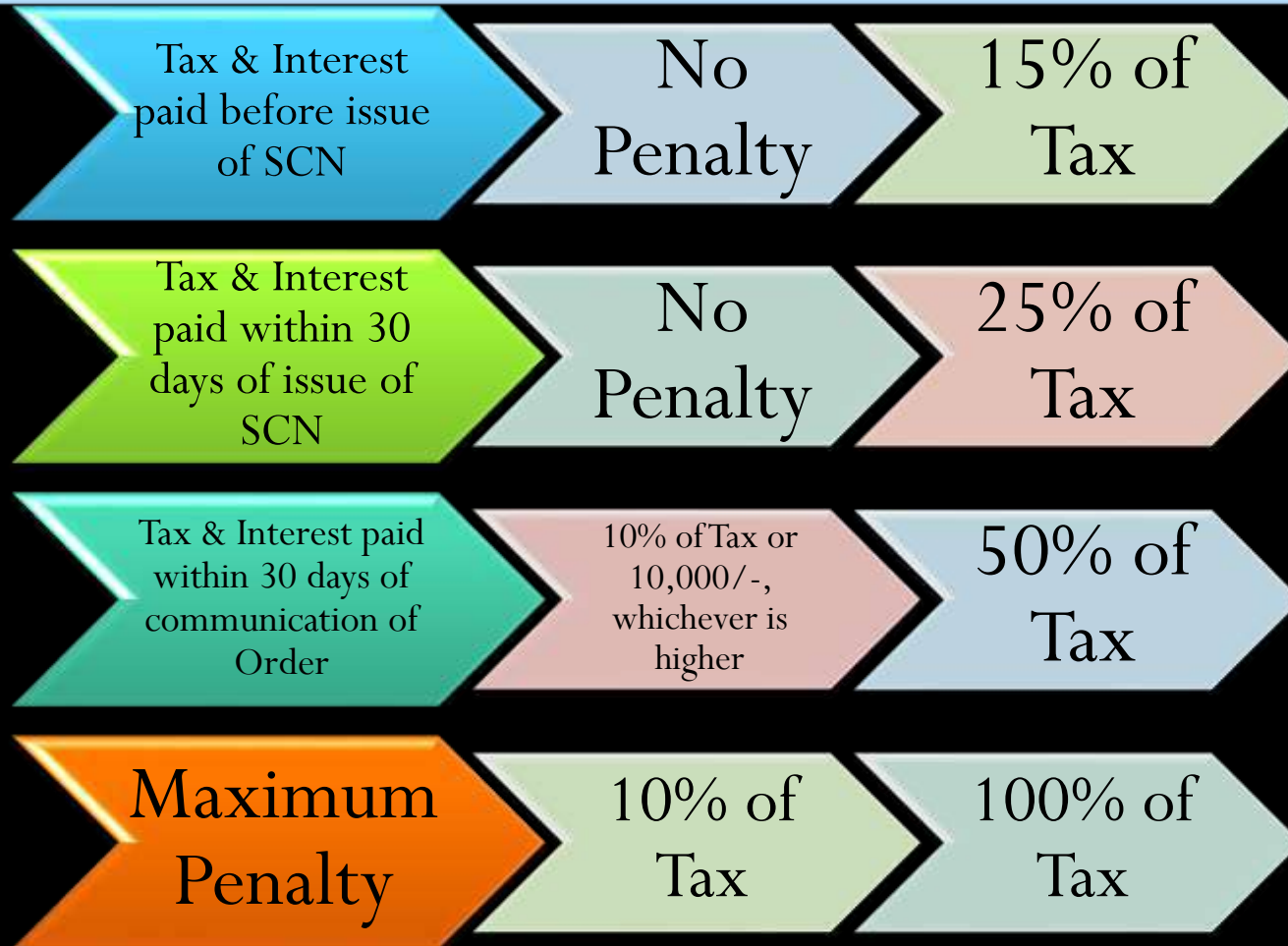
“All proceedings in respect of the said notice”

- the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132 (Prosecution)

Conclusion of proceedings against all the persons

- where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded

Penalty u/s 73 & 74



Tax Collected but not paid to Government

Sec.76

- 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

Tax Collected but not paid to Government

Sec.76

- This Provision is applicable notwithstanding any thing 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

Tax Collected but not paid to Government

Sec.76

Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid-

the proper officer may serve on the person liable to pay such amount a notice (DRC-01) requiring him to show cause

as to why the said amount as specified in the notice, 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 this Act

Tax Collected but not paid to Government

Sec.76

The proper officer shall determine the amount due from such person and thereupon such person shall pay the amount so determined

The person 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

The proper officer shall issue an order within one year from the date of issue of the notice

Tax Collected but not paid to Government

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

After adjusting the tax payable on supplies if any, Where any surplus is left after the adjustment, the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount

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 wrongly collected and paid to government

Sec.77

Tax Paid as
Intra-State
wrongly

- Tax paid as Intra-state supply but which is subsequently held to be an inter-State supply, **shall be refunded** the amount of taxes so paid

Tax Paid as
Inter-State
wrongly

- Tax paid as 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

Disclaimer

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Thank You

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