

SECTION 73. DETERMINATION OF TAX ¹[PERTAINING TO THE PERIOD UPTO FINANCIAL YEAR 2023-24] NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILABLE OR UTILISED FOR ANY REASON OTHER THAN FRAUD OR ANY WILFUL MISSTATEMENT OR SUPPRESSION OF FACTS.

- (1) **Issuance of show cause cum demand notice** Where it appears to *the proper officer* upto the rank of additional or joint Commissioner | has not to be a casual act but should show full application of mind that any *tax* has not been paid or short paid also refer S 51(7) or erroneously refunded, or where input tax credit Can SCN be issued for transition credit? Read definition of ITC | Rule 121 has been wrongly availed S 16 to 19 | Can SCN be issued for wrong availment of credit but not utilised? Interest is payable only on wrong utilisation u/s 50 or utilised S 49 for any reason Question of law or question of fact, **other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax**, he shall serve notice **[R 142(1) | Electronically DRC-01]** but before serving a notice PO may communicate the dues in DRC 01A **[R 142(1A)]** on the *person chargeable with tax* Proprietorship converted into Company which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with **interest** payable thereon under section 50 Refer S 75(9) and a **penalty** leviable under the provisions of this Act or the rules made thereunder.

Note 1: Absence of fraud, wilful mis-statement or suppression of facts with intent to evade tax

Note 2: In case of self assessed tax or interest payable on late filing of GSTR 3B, provisions of section 75(12) would follow if the tax and interest are admitted liability otherwise a SCN u/s 73/74 is required to be issued. A SCN u/s 73/74 is required to be issued even if only interest is payable and is disputed.

- (2) **Time of issuance of SCN** The proper officer upto the rank of additional or joint Commissioner shall issue the notice under section 73(1) at least **3 months** prior to the time limit specified in section 73(10) for issuance of order within 3 years from the due date for furnishing of annual return / date of erroneous refund | Separate SCN should be issued for each financial year.
- (3) **Summary of statement of other periods** Where a notice has been issued for any **period** under section 73(1), the proper officer upto the rank of additional or joint Commissioner may **serve a statement**, **[R 142(1)(b) | Electronically DRC-02]** containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised *for such periods other than those covered under section 73(1)*, on the person chargeable with tax. no SCN required if same grounds bt issue DRC 02
- (4) The service of such **statement** shall be deemed to be service of notice on such person under section 73(1), subject to the condition that the **grounds** relied upon for such tax periods other than those covered under section 73(1) are the **same** as are mentioned in the earlier notice.
- (5) The person chargeable with tax **may, before** service of notice or after communication in DRC 01A under section 73(1) or, as the case may be, the statement under section 73(3) ^{DRC 02}, pay the amount of *tax along with interest payable* thereon under section 50 on the basis of his own ascertainment of such tax Refer S 75(9) or the tax as ascertained Audit, Investigation, SCN, others by the proper officer and inform the proper officer upto the rank of additional or joint Commissioner in writing of such payment. **[R 142(2) R 142(3) | DRC-03]**
- (6) **Full Payment of both tax and interest** The proper officer upto the rank of additional or joint Commissioner, on receipt of such information ⁷³⁽⁵⁾, shall not serve any notice under section 73(1) ^{DRC 01} or, as the case may be, the statement under section 73(3) ^{DRC 02}, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) **Short Payment of either tax or interest** Where the proper officer upto the rank of additional or joint Commissioner is of the opinion that the amount paid under section 73(5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in section 73(1) ^{DRC 01} in respect of such amount which falls short of the amount actually payable.
- (8) **Intimation of conclusion of proceedings** Where any person chargeable with tax under section 73(1) ^{DRC 01} or section

¹ Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

73(3) ^{DRC 02} pays the said tax along with interest payable under section 50 within **30 days** of issue of show cause notice, **no penalty shall be payable** and *all proceedings* ^{refer explanation} in respect of the said notice shall be deemed to be concluded. [R 142(3) | DRC-05]

- (9) **Order** The proper officer ^{upto the rank of additional or joint Commissioner} shall, after considering the representation ^[Reply to the show cause notice - GST DRC-06], if any, made by person chargeable with tax, determine the amount of **tax, interest and a penalty equivalent to 10% of tax or ₹ 10,000**, whichever is **higher**, due from such person and issue an order [R 142(5) | DRC-07]. This provisions of higher penalty should be challenged as there is no case of fraud maximum penalty which can be leviable is ₹ 10,000 | Rectification of order under rule 142(7) in GST DRC 08 | What if tax is paid in full and interest is not paid. Can penalty be leviable?

Refer Kerala Circular at TaxByKK.com for examples

- (10) The proper officer ^{upto the rank of additional or joint Commissioner} shall issue the **order** under section 73(9) within **3 years** from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or **within 3 years from the date of erroneous refund**. ^{If not deemed to be concluded}

Table 1: Short payment / not paid / ITC wrongly availed or utilised

Financial Year	Due date of filing of GSTR 9	Last date of issue of notice u/s 73(2)	Last date of issue of order u/s 73(10)	Last date of issue of notice u/s 74(2)	Last date of issue of order u/s 74(10)
2017-18	5/7-Feb 2020	5/7-Nov-2022 30.06.2023 30.09.2023	5/7-Feb-2023 30.09.2023 31.12.2023	5/7-Aug 2024	5/7-Feb 2025
2018-19	31.12.2020	30.09.2023 31.12.2023 31.01.2024	31.12.2023 31.03.2024 30.04.2024	30.06.2025	31.12.2025
2019-20	31.03.2021	31.12.2023 31.03.2024 31.05.2024	31.03.2024 30.06.2024 31.08.2024	30.09.2025	31.03.2026
2020-21	28.02.2022	30.11.2024	28.02.2025	28.08.2026	28.02.2027
2021-22	31.12.2022	30.09.2025	31.12.2025	30.06.2026	31.12.2027
2022-23	31.12.2023	30.09.2026	31.12.2026	30.06.2027	31.12.2028
2023-24	31.12.2024	30.09.2027	31.12.2027	30.06.2029	31.12.2029

²[Section 168A: **Extends** the time limit specified under section 73(10) for issuance of order under section 73(9) of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:—

- (i) for the financial year 2018-19, upto the 30th day of April, 2024;
- (ii) for the financial year 2019-20, upto the 31st day of August, 2024.]

³[Section 168A: **Extends** the time limit specified under section 73(10) for issuance of order under section 73(9) of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:—

- (i) for the financial year 2017-18, upto the 31st day of December, 2023;
- (ii) for the financial year 2018-19, upto the 31st day of March, 2024;
- (iii) for the financial year 2019-20, upto the 30th day of June, 2024.]

⁴[Section 168A: **Extends** the time limit specified under section 73(10) for issuance of order under section 73(9) of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year **2017-18**, up to the **30.09.2023**

2 Inserted vide NN 56/2023 CT dated 28.12.2023.

3 Inserted vide NN 09/2023 CT dated 31.03.2023.

4 Inserted vide NN 13/2022 CT dated 05.07.2022 effective from 01.03.2020

Excludes the period from the 01.03.2020 to the 28.02.2022 ^{2 years} for computation of period of limitation under section 73(10) of the said Act for issuance of order under section 73(9) of the said Act, for **recovery of erroneous refund**]

Note 1: In case of erroneous refund, date of 3/5 years shall be counted from date of refund order and then add 2 years to it.

Table 1: Recover of erroneous refund

Financial Year	Due date of filing of Annual Return	Last date of issuance of order u/s 73(10)		Last date of issuance of notice u/s 73(2)
		Before amendment	After amendment	
2017-18	3/5/7-Feb 2020	3/5/7-Feb 2023	3/5/7-Feb 2025	30.09.2023
2018-19	31.12.2020	31.12.2023	31.12.2023	31.12.2024
2019-20	31.03.2021	31.03.2024	31.03.2024	31.03.2024
2020-21	28.02.2022	28.02.2025	28.02.2025	30.11.2024
2021-22	31.12.2022	31.12.2025	31.12.2025	30.09.2025

- (11) Notwithstanding anything contained in section 73(6) ^{full payment} or section 73(8) ^{conclusion of proceedings}, penalty under section 73(9) ^{10% of tax or ₹ 10,000 whichever is higher} shall be payable where any amount of **self-assessed tax** ^{GSTR 1 vs GSTR 3B} or any amount collected as tax has not been paid ^{S 76} within a period of **30 days** from the due date of payment of such tax. ^{Late filing of GSTR 3B | Refer Section 75(12)}

- ⁵[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.]

Circular No. 76/50/2018 dated 31-12-2018

Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in GSTR-3B has been filed after the due date of filing such return?

- As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.
- It may be noted that a show cause notice is required to be issued to a person 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 for any reason under the provisions of section 73(1) of the CGST Act. **The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.**
- The provisions of S 73 are generally not invoked in case of delayed filing of the return in GSTR-3B because tax alongwith applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of S 73(11) is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, **a general penalty u/s 125 may be imposed after following the due process of law.**

SECTION 74. DETERMINATION OF TAX ¹[PERTAINING TO THE PERIOD UPTO FINANCIAL YEAR 2023-24] NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILABLE OR UTILISED BY REASON OF FRAUD OR ANY WILFUL MISSTATEMENT OR SUPPRESSION OF FACTS

- (1) Where it appears to the proper officer ^{upto the rank of additional or joint Commissioner} 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** ^{Intent to evade tax is built in this word "fraud"}, **or any wilful-misstatement** ^{intent to evade tax should be there} **or wilful suppression of facts** ^{Explanation} **to** ^{Intent to} **evade tax**, he shall serve notice ^[R 142(1) | DRC-01] but before serving a notice PO may communicate the dues in DRC 01A ^[R 142(1A)] on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to 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** ^{100% of tax} specified in the notice.

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.* ^{or S 122(1)(xvii) | Suppression should be for intent to evade tax | Is late filing of return result into suppression? | Non payment of tax due to bonafide belief that a supply is exempted will result into suppression?}

Note 1: In fraud, it is evident that there is intent to evade tax.

Note 2: Mis-statement or suppression of facts are clearly qualified by the word "wilful" which means with intent to evade duty. i.e. misstatement or suppression of fact must be wilful.

Note 3: Extended period of SCN can be issued only if above ingredients of intent to evade tax is present otherwise it will lead to unnecessary litigation.

- (2) The proper officer ^{upto the rank of additional or joint Commissioner} shall issue the notice under section 74(1) at least **6 months** prior to the time limit specified in section 74(10) for issuance of order.
- (3) **Summary of statement** Where a notice has been issued for any period under section 74(1), the proper officer ^{upto the rank of additional or joint Commissioner} **may serve a statement**, ^[R 142(1)(b) | DRC-02] containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under section 74(1), on the person chargeable with tax.
- (4) The service of statement under section 74(3) shall be deemed to be service of notice under section 74(1), subject to the condition that the grounds relied upon in the said statement, *except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax*, for periods other than those covered under section 74(1) are the same as are mentioned in the earlier notice.
- (5) The person chargeable with tax may, **before** service of notice under section 74(1) ^{or after communication in DRC 01A}, pay the amount of tax along with interest payable under section 50 and a penalty equivalent to **15% of such tax** on the basis of his own ascertainment of such tax ^{Voluntary} or the tax as ascertained ^{Audit, Investigation, SCN, others} by the proper officer ^{DRC 01A [R 142(1A)]} and inform the proper officer ^{Superintendent / Deputy or Assistant Commissioner} in writing of such payment. ^[R 142(2) R 142(3) | DRC-03]

Analysis: Thus, from the above, the scheme of the Act is that a person may be given one opportunity to make the payment towards tax. If he makes the payment under sub-section (5), then he gets the benefit of sub section (6). Service of DRC 01A or any other communication is mandatory otherwise this clause becomes redundant.

- (6) The proper officer ^{upto the rank of additional or joint Commissioner}, on receipt of such information, ^{S 74(5)} shall not serve any notice under section 74(1) ^{DRC 01}, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

¹ Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

- (7) Where the proper officer ^{upto the rank of additional or joint Commissioner} is of the opinion that the amount paid under section 74(5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in section 74(1) ^{DRC 01} in respect of such amount which falls short of the amount actually payable.
- (8) **Intimation of conclusion of proceedings** Where any person chargeable with tax under section 74(1) ^{DRC 01} pays the said tax along with interest payable under section 50 and a penalty equivalent to **25% of such tax** within **30 days of issue** of the notice, *all proceedings* ^{refer explanation} in respect of the said notice shall be deemed to be concluded. [R 142(3) | DRC-05]
- (9) **Summary of order** The proper officer ^{upto the rank of additional or joint Commissioner} shall, after considering the representation [Reply to the show cause notice - DRC-06], if any, made by person chargeable with tax, determine the amount of **tax, interest and penalty** due from such person and issue an order. [R 142(5) | DRC-07].

Rectification of order under rule 142(7) in FORM GST DRC 08

- (10) The proper officer ^{upto the rank of additional or joint Commissioner} shall issue the order under section 74(9) within a period of **5 years** from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within **5 years from the date of erroneous refund**.
- (11) Where any person served with an order issued under section 74(9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to **50% of such tax** within 30 days of communication of the order, *all proceedings* ^{refer explanation} in respect of the said notice shall be deemed to be concluded.
- ²[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.]

Explanation 1.—For the purposes of section 73 and this section ^{S 74}, the expression —

- (i) “all proceedings in respect of the said notice” shall **not** include proceedings ^{including proceedings u/ss 129 and 130 shall come to an end} under section 132. ^{Punishment for certain offences shall not come to an end;}
- (ii) ³[where the notice under the same proceedings is issued to the main person ^{let us suppose owner of goods / supplier of goods / company} liable to pay tax and some other persons ^{let us suppose transporter of goods / directors}, 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 ^{Penalty for certain offences}, 125 ^{General Penalty}, ~~129~~ ^{Detention, Seizure and release of goods and conveyances in transit} and ~~130~~ ^{Confiscation of goods or conveyances and levy of penalty} are deemed to be concluded.] | Effective from 01.01.2022

Analysis: Henceforth after amendment, legislature can take actions both under sections 73/74 and 129/130. For example if main person i.e. supplier comes forward and pays tax and penalty under section 73/74 then, proceedings u/s 122 and 125 shall be come to end for other person also. But separate proceedings u/s 129 and 130 shall not come to an end against other persons.

Explanation 2.—For the purposes of this Act, the expression

- (i) “suppression” shall mean non-declaration of facts or information which a taxable person is **required** to declare in the return ^{non furnishing of ineligible credit in GSTR 3B and with intent to evade tax}, 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.

2 Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

3 Substituted for “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 ^{Penalty for certain offences}, 125 ^{General Penalty}, 129 ^{Detention, Seizure and release of goods and conveyances in transit} and 130 ^{Confiscation of goods or conveyances and levy of penalty} are deemed to be concluded” vide section 113 of Finance Act 2021 and made effective from 01.01.2022 vide NN 39/2021 CT dated 21.12.2021

Instruction No. 05/2023-GST dated 13.12.2023

From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. **Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax.** Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

For your reading

In Smt. Shirishti Dhawan vs. Shaw Brothers – AIR 1992 SC 1555, the Supreme Court held that there can be no suppression of facts if facts which are not required to be disclosed are not disclosed.

Commissioner of Sales Tax v Rama and Sons, General Merchant, Ballia, 1999 UPTC 25 the Allahabad High Court observed as under

We have words like ‘voluntarily’, ‘Intentionally’, ‘negligently’, ‘knowingly’, ‘fraudulently’, ‘dishonestly’, ‘rashly’, ‘omits’, ‘without lawful authority’ etc, used in various sections of the Indian Penal Code defining various offences. Proof of the state of mind or of the *conduct of the person as indicated by the aforesaid word* establishes the offence and no further guilty intent or mens rea needs to be proved.

Fraud: The dictionary meaning is “wrongful or criminal deception intended to result in financial or personal gain. A person or thing intended to deceive others, typically by unjustifiably claiming or being credited with accomplishments or qualities also describe fraud. The basic element of fraud is deceit. As per Section 25 of the Indian Penal Code fraudulently is defines as: “A person is said to do a thing fraudulently if he does that thing with the intent to defraud but not otherwise”. According to the section 17 of Indian Contract Act 1872, fraud means making a suggestion, as a fact, which the person making does not believe to be true. Fraud also means active concealment of fact with a view to deceive the exchequer. Intention to evade duty is built in to the act of fraud. Fraud is against public policy. The trace of fraud in GST proceedings may take variety of forms, designs and may involve one or more parties.

Wilful-misstatement: Wilful means with intent to evade GST. Every misstatement need not be wilful. Wilful is deliberate or intentional. The dictionary meaning is “having or showing a stubborn and determined intention to do as one wants, regardless of the consequences.” A false statement will be termed as wilful if it is intentional or deliberate. Misstatement must be wilful to invoke extended period of limitation.

In one of the leading judgments on this issue, the Supreme Court, in the case of *CCE vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)*, has observed that fraud, etc. is essentially a question of fact and has to be established if there is a positive act. Non-declaration of something in the returns is not suppression if there is no deliberate withholding of information.

Other points

In *Cosmic Dye Chemicals case (supra)*, the Supreme Court observed that a false statement becomes ‘wilful’ if it is deliberate or intentional. It is not willful if the statement is accidental or inadvertent. A statement will not be misstatement only because full facts were not disclosed.

‘Wilful’ means ‘with intent to evade duty’. In *Tamil Nadu Housing Board vs. CCE – 1991 (74) ELT 9 (SC)*, the Supreme Court observed that intention to evade payment of duty is not mere failure to pay duty. It must be something more, i.e., that assessee must be aware that duty was leviable and he must deliberately avoid payment of duty. ‘Evade’ means defeating the provision of law of paying duty. It is made more stringent by the use of word ‘intent’. In other words, the assessee must deliberately avoid payment of duty payable under the law. Where there was scope of doubt whether duty was payable or not, it is not ‘intention to evade duty’.

Following points can be argued that section 74 notice should not be issued against the taxpayer

Bonafide belief, No suppression if all material facts are disclosed, Revenue Neutrality

COMPARISION BETWEEN SECTION 73 AND SECTION 74

	Section 73	Section 74
Rule 142(1A)	DRC 01A Part A before issue of notice u/s 73(1) - Pre communication	DRC 01A part A before issue of notice u/s 74(1) - Pre communication
Ground for issuance of SCN and Forms 73(1) / 74(1)	Tax not paid/short paid/erroneously refunded /ITC wrongly availed or utilized, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax SCN + Summary in DRC 01	Tax not paid/short paid/erroneously refunded /ITC wrongly availed or utilized, by reason of fraud or any wilful-misstatement or suppression of facts to evade tax SCN + Summary in DRC 01
Time limit for issuance of Notice 73(2) / 74(2)	At least 3 months prior to the time limit prescribed u/s 73(10) for issuance of order u/s 73(9)	At least 6 months prior to the time limit prescribed u/s 74(10) for issuance of order u/s 74(9)
Statement 73(3) / (4) / 74(3) / (4)	Different period but same ground serve DRC 02	Different period but same ground serve DRC 02
Payment of tax before service of notice 73(5) / 74(5)	Pay tax and interest before DRC 01 / 02 through DRC 03. No Penalty	Pay tax, interest and 15% penalty before DRC 01 / 02 through DRC 03.
Conclusion of proceedings 73(6) / 74(6)	If full payment of tax and interest is made then DRC 01 / 02 shall not be issued and no penalty.	If full payment of tax, interest and 15% penalty is made then DRC 01 / 02 shall not be issued.
Short payment 73(7) / 74(7)	No tax is paid or tax paid but interest not paid then it shall issue DRC 01 and shall also levy penalty.	No tax is paid or tax paid but interest not paid or tax and interest paid but penalty not paid then it shall issue DRC 01.
Payment of tax after service of notice 73(8) / 74(8)	If full payment of tax and interest is made within 30 days of issuance of DRC 01 / 02 then proceedings shall be deemed to be concluded and no penalty.	If full payment of tax, interest and 25% penalty is made within 30 days of issuance of DRC 01 / 02 then proceedings shall be deemed to be concluded.
If reply is furnished and there is non payment or shortfall in payment of tax, interest or penalty 73(9) / 74(9)	Determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, due from such person and issue an order	Determine the amount of tax, interest and a penalty equivalent to 100% of such tax due from such person and issue an order
Time limit for issuance of order 73(10) / 74(10) DRC 07	Issue the order within 3 years from the due date for furnishing of annual return for the financial year to which the tax not paid/short paid or ITC wrongly availed/utilised relates to or within 3 years from the date of erroneous refund.	Issue the order within 5 years from the due date for furnishing of annual return for F.Y. to which the tax not paid/short paid or ITC wrongly availed/utilised relates to or within 5 years from the date of erroneous refund.
73(11) / 74(11)	<u>Self assessed tax not paid or S 76</u> Pay penalty = 10% of tax or ₹ 10,000, whichever is higher, due from such person and issue an order	<u>Adjudication tax as per DRC 07</u> Paid within 30 days from DRC 07: Penalty = 50% of tax and thereafter 100% of tax.

SECTION 74A. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILABLE OR UTILISED FOR ANY REASON PERTAINING TO FINANCIAL YEAR 2024-25 ONWARDS.

- (1) **Issuance of show cause cum demand notice** Where it appears to the proper officer ^{upto the rank of additional or joint Commissioner} | has not to be a casual act but should show full application of mind ^{that any tax has not been paid or short paid or erroneously refunded, or where input tax credit} ^{Can SCN be issued for transition credit ? Read definition of ITC | Rule 121} has been wrongly availed ^{S 16 to 19} | ^{Can SCN be issued for wrong availment of credit but not utilised? Interest is payable only on wrong utilisation u/s 50} or utilised ^{Section 49}, he shall serve notice on the *person chargeable with tax* ^{Proprietorship converted into Company} which has not been so paid or which has been so short paid ^{also refer Section 51(7)} or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause ^{IR 142(1) | Electronically DRC-01} but before serving a notice PO may communicate the dues in DRC 01A ^{IR 142(1A)} as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 ^{Also refer Section 75(9)} and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the **tax** which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is **less than one thousand rupees**.
- (2) **Time of service of SCN** The proper officer ^{upto the rank of additional or joint Commissioner} shall issue the notice under sub-section (1) within **42 months** ^{3 years 6 months} from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund. ^{Notice should be served within 42 months from the due date of annual return}
- (3) **Summary of statement of other periods** Where a notice has been issued for any period under sub-section (1), the proper officer ^{upto the rank of additional or joint Commissioner} may serve a statement ^{IR 142(1)(b) | Electronically DRC-02}, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under subsection (1), on the person chargeable with tax.
- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice. ^{no SCN required if same grounds bt issue DRC 02}
- (5) The **penalty** in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,—
 - (i) **Bonafide case:** Penalty = 10% of tax due or Rs. 10,000 whichever is higher ^{for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to} **ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;**
 - (ii) **Malafide case:** penalty = 100% of tax due ^{for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.}
- (6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
- (7) The proper officer shall issue the order under sub-section (6) within **12 months from the date of issuance of notice specified in sub-section (2):**

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, **extend the said period further by a maximum of six months.**

- (8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, **other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax**, may, — similar to section 73
 - (i) **before service of notice** under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;
 - (ii) pay the said tax along with interest payable under section 50 **within 60 days** of issue of show cause notice, and on doing so, **no penalty shall be payable** and all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The person chargeable with tax, where 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**, may, — similar to section 74
 - (i) **before service of notice** under sub-section (1), pay the amount of tax along with interest payable under section 50 and a **penalty equivalent to 15% of such tax** on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;
 - (ii) pay the said tax along with interest payable under section 50 and a **penalty equivalent to 25%** of such tax **within 60 days** of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;
 - (iii) pay the tax along with interest payable thereon under section 50 and a **penalty equivalent to 50%** of such tax **within 60 days** of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.
- (10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable.
- (11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of subsection (5) shall be payable where any amount of self assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.
- (12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

Explanation 1.—For the purposes of this section,—

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132; closure of penalty u/s 74A will not result in abatement of the proceedings u/s 132
- (ii) 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 this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

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.]

Penalty u/s 74A

S 74A. Non-Fraud cases

Nil S 74A(8)(i)	Nil S 74A(8)(ii)		10% of tax or Rs. 10,000 whichever is higher S 74A(5)(i)
	DRC 01	60 days	beyond 60 days

S 74A. Fraud Cases

Nil	15% S 74A(9)(i)	25% S 74A(9)(ii)	50% S 74A(9)(iii)	100% S 74A(5)(ii)
	DRC 01A any time gap	DRC 01 60 days	beyond 60 days DRC 07 60 days	beyond 60 days

Penalty u/s 73

Nil S 73(5)	Nil S 73(8)		10% S 73(11)		10% S 73(1)
	DRC 01	30 days	beyond 30 days	DRC 07 30 days	beyond 30 days

Penalty u/s 74

Nil	15% S 74(5)	25% S 74(8)	50% S 74(11)	100% S 74(1)
	DRC 01A any time gap	DRC 01 30 days	beyond 30 days DRC 07 30 days	beyond 30 days

Time limit of issuance of notice and order under Section 74A

Financial Year	Due date of filing of GSTR 9	Last date of issue of notice u/s 74A(2)	Last date of issue of order u/s 74A(7)	
		3 years 6 months from due date of GSTR 9	12 months	extended upto 6 months
2024-25	31.12.2025	30.06.2029	30.06.2030	31.12.2030
2025-26	31.12.2026	30.06.2030	30.06.2031	31.12.2031
2026-27	31.12.2027	30.06.2031	30.06.2032	31.12.2032
2027-28	31.12.2028	30.06.2032	30.06.2033	31.12.2033
2028-29	31.12.2029	30.06.2033	30.06.2034	31.12.2034
2029-30	31.12.2030	30.06.2034	30.06.2035	31.12.2035

¹RULE 142. NOTICE AND ORDER FOR DEMAND OF AMOUNTS PAYABLE UNDER THE ACT

- (1) The proper officer ^{Superintendent / Asst Commissioner / Deputy Commissioner / additional/joint commissioner} shall *serve*, along with the
- (a) notice ^{Show cause cum demand notice, the grounds on which demand is raised} issued under section 52 ^{TCS | also refer S 51(7) for TDS} or section 73 ^{bonafide demand} or section 74 ^{malafide demand} ²[or section 74A] or section 76 ^{Tax collected but not paid to Govt.} or section 122 ^{Penalties for certain offences} or section 123 ^{Penalty for failure to furnish information return} or section 124 ^{Fine for failure to furnish statistics} or section 125 ^{General Penalty} or section 127 ^{Power to impose penalty in certain cases} or section 129 ^{Detention, seizure, and release of goods and conveyances in transit} or section 130, ^{Confiscation of goods or conveyances and levy of penalty} a summary thereof *electronically* in **GST DRC-01**, ^{Summary of Show cause cum demand notice | Serve SCN in DRC 01 and Summary of DRC 01 in Portal}
- (b) statement ^{grounds} under section 73(3) ^{other periods same grounds} or section 74(3), ^{other periods same grounds} ³[or section 74A(3)] a summary thereof *electronically* in **GST DRC-02**, ^{Serve SCN in DRC 02 and Summary of DRC 02 in Portal} specifying therein the details of the amount payable.
- ⁴[(1A) The ⁵[proper officer may,] ^{now optional to issue DRC 01A and officer should record reasons for not issuing it | upto the rank of additional or joint Commissioner} before service of notice to the person chargeable with tax, interest and penalty, under Section 73(1) ^{DRC 01} or Section 74(1), ^{DRC 01} ⁶[or section 74A(1)] as the case may be, ⁷[communicate] the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of GST DRC-01A.**]
- (2) Where, before the service of notice ^{DRC-01} or statement, ^{DRC-02} the person chargeable with tax makes payment of the *tax and interest* in accordance with the provisions of section 73(5) ⁸[or of section 74A(8) (i), as the case may be, or tax, interest and penalty in accordance with the provisions of section 74(5) or section 74A(9)(i)], or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act ⁹[whether on his own ascertainment or, as communicated

1 Substituted w.e.f. 01.04.2019 vide NN 16/2019 CT dated 29.03.2019

(1) The proper officer shall serve, along with the

(a) notice under section 73(1) or section 74(1) or section 76(2), a summary thereof *electronically* in DRC-01,

(b) statement under S 73(3) or S 74(3), a summary thereof *electronically* in DRC-02, specifying therein the details of the amount payable.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73(5) or, as the case may be, tax, interest and penalty in accordance with the provisions section 74(5), he shall inform the proper officer of such payment in GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in GST DRC-04.

(3) Where the person chargeable with tax makes payment of tax and interest under section 73(8) or, as the case may be, tax, interest and penalty under section 74(8) within 30 days of the service of a notice under rule 142(1), he shall intimate the proper officer of such payment in GST DRC-03 and the proper officer shall issue an order in GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in section 73(9) or section 74(9) or section 76(3) shall be in GST DRC-06.

(5) A summary of the order issued under section 73(9) or section 74(9) or section 75(12) or section 76(3) or section 129 or section 130 shall be uploaded *electronically* in GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in rule 142(5) shall be treated as the notice for recovery.

(7) Any rectification of the order, in accordance with the provisions of section 161, shall be made by the proper officer in DRC-08.

2 Inserted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024.

3 Inserted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024.

4 Inserted vide NN 49/2019 CT dated 09.10.2019.

5 Substituted for “proper officer shall” vide NN 79/2020 CT dated 15.10.2020.

6 Inserted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024.

7 Substituted for “shall communicate” vide NN 79/2020 CT dated 15.10.2020.

8 Substituted w.e.f. 01.11.2024 for the words “or, as the case may be, tax, interest and penalty in accordance with the provisions section 74(5)” vide NN 20/2024 CT dated 08.10.2024.

9 Inserted vide NN 49/2019 CT dated 09.10.2019.

by the proper officer under sub-rule (1A) ^{DRC-01A} ¹⁰ [he shall inform the proper officer of such payment in **GST DRC-03** and an acknowledgement, in **GST DRC 04** shall be made available to the person through the *common portal electronically*.] ^{Now, DRC 04 is auto-acknowledged on the portal without going through PO.}

¹¹ [(2A) Where the person referred to in sub-rule (1A) has made **partial payment** of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of GST DRC-01A**.] ¹² [and thereafter the proper officer may issue an intimation in **Part C of GST DRC-01A**, accepting the payment or the submissions or both, as the case may be, made by the said person]

¹³ [(2B) Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 ¹⁴ [or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person through an intimation in **GST DRC-03** under sub-rule (2), instead of crediting the said amount in the electronic liability register in **GST PMT 01** against the debit entry created for the said demand, the said person may file an application in **GST DRC-03A** electronically on the common portal, and the amount so paid and intimated through **GST DRC-03** shall be credited in Electronic Liability Register in **GST PMT –01** against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through **GST DRC-03**. ^{Select only voluntary or others while making payment vide DRC 03}

Provided that where an order in **GST DRC-05** has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in **GST DRC-03**, an application in **GST DRC-03A** cannot be filed by the said person in respect of the said payment.]

¹⁵ [(3) Where the person chargeable with tax makes payment of tax and interest under section 73(8) or under section 74A(8)(ii), as the case may be, or tax, interest and penalty under section 74(8) or under section 74A(9)(ii), as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in section 129(1) within **seven days** of the notice issued under section 129(3) of that section but before the issuance of order under the said section 129(3), he shall intimate the proper officer of such payment in **GST DRC-03** and the proper officer shall issue an intimation in **GST DRC-05** concluding the proceedings in respect of the said notice.]

10 Substituted vide NN 12/2024 CT dated 10.07.2024. Prior to it's Substitution, it read as under:

“he shall inform the proper officer ^{Superintendent} of such payment in GST DRC-03 and the proper officer ^{Superintendent} shall issue an acknowledgement, accepting the payment made by the said person in GST DRC–04.”

11 Inserted vide NN 49/2019 CT dated 09.10.2019.

12 Inserted vide NN 12/2024 CT dated 10.07.2024.

13 Inserted vide NN 12/2024 CT dated 10.07.2024.

14 Inserted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024.

15 Substituted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024. Prior to it's substitution it read as under:

*“Where the person chargeable with tax makes payment of tax and interest under section 73(8) or, as the case may be, tax, interest and penalty under section 74(8) within **30 days** of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 **within #7 days** of the notice issued under section 129(3) but before the issuance of order under the said section 129(3), he shall intimate the proper officer of such payment in **GST DRC-03** and the proper officer shall issue an intimation in **GST DRC-05** concluding the proceedings in respect of the said notice.”*

Substituted w.e.f. 01.01.2022 for the words “**14 days** of detention or seizure of the goods and conveyance” vide NN 40/2021 CT dated 29.12.2021

- (4) The representation referred to in section 73(9) ^{summary order} or section 74(9) ^{summary order} ¹⁶ [or section 74A(6)] or section 76(3) or the reply to any notice issued under any section whose summary has been uploaded electronically in **GST DRC-01** under sub-rule (1) shall be furnished in **GST DRC-06**. ^{Reply to SCN}
- (5) A summary of the order issued under section 52 ^{TCS} or section 62 ^{Assessment of non-filers of return} or section 63 ^{Assessment of unregistered persons} or section 64 ^{Summary assessment} or section 73 ^{bonafide demand} or section 74 ^{malafide demand} ¹⁷ [or section 74A] or section 75 or section 76 or section 122 ^{Penalties for certain offences} or section 123 ^{Penalty for failure to furnish information return} or section 124 ^{Fine for failure to furnish statistics} or section 125 ^{General Penalty} or section 127 ^{Power to impose penalty in certain cases} or section 129 ^{Detention, seizure, and release of goods and conveyances in transit} or section 130 ^{Confiscation of goods or conveyances and levy of penalty} shall be uploaded electronically in **GST DRC-07**, specifying therein the amount of ¹⁸ [tax, interest and penalty, as the case may be, payable by the person concerned] ^{effective 01.01.2022}.
- (6) The order referred to in sub-rule (5) ^{DRC 07} shall be treated as the notice for recovery.
- (7) Where a rectification of the order has been passed in accordance with the provisions of section 161 ^{Rectification of errors apparent on the face of record} or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer ^{Superintendent} in **GST DRC-08**.]

Procedure to be followed

Wrong Steps		Right Steps	
1	DRC 01A-->DRC 07 R 142(1A)-->73(9) / 74(9)	1	DRC 01A-->DRC 01-->DRC 07 R 142(1A)-->73(1)/74(1)-->73(9)/74(9)
2	DRC 07 73(9) / 74(9)	2	DRC 01-->DRC 07 73(1) / 74(1)-->73(9) / 74(9)-->74(9)

¹⁹**RULE 142A. PROCEDURE FOR RECOVERY OF DUES UNDER EXISTING LAWS**

- (1) A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in **GST DRC-07A** electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in **GST PMT-01**.
- (2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in **DRC-08A** and Part II of Electronic Liability Register in **GST PMT-01** shall be updated accordingly.

¹⁶ Inserted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024.

¹⁷ Inserted w.e.f. 01.11.2024 vide NN 20/2024 CT dated 08.10.2024.

¹⁸ Substituted w.e.f. 01.01.2022 for “tax, interest and penalty payable by the person chargeable with tax” vide NN 40/2021 CT dated 29.12.2021.

¹⁹ Inserted vide NN 60/2018 CT dated 30.10.2018.

SECTION 75. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX

- (1) **Exclusion of period of stay** 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 period specified in sections 73(2) ^{2 Y 9 M} and 73(10) ^{3 Y} or sections 74(2) ^{4 Y 6 M} and 74(10) ^{5 Y} ¹ [or section 74A(2) and 74A(7)], as the case may be.
- (2) **74(1) = 73(1) if fraud charges not proved** Where any Appellate Authority or Appellate Tribunal or court concludes that the **notice** issued under section 74(1) 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 against the person to whom the notice was issued, the **proper officer shall determine the tax payable** by such person, deeming as if the notice were issued under section 73(1). refer Circular No 185/17/2022 dated 27.12.2022
- ²[(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under section 74A(5)(ii) ^{fraud cases} 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 against the person to whom the notice was issued, the penalty shall be payable by such person, under section 74A(5)(i) ^{non-fraud cases}.]
- (3) **Order = Communication of direction + 2 years** Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within **2 years from the date of communication of the said direction.** personal hearing not given, cross examination was not provided, demand dropped etc
- (4) **Reasonable opportunity of being heard** 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. ROBH shall be granted on request | Mandatory to grant personal hearing if any adverse decision is contemplated.

Right to cross examine: *Although Section 75(4) does not expressly provide for cross-examination, judicial pronouncements have consistently recognized that such a right emanates from the principles of natural justice. Where the adjudication is founded upon adverse reliance on third-party statements, the “opportunity of hearing” contemplated under Section 75(4) necessarily includes an effective opportunity to rebut and challenge such evidence, which, depending upon the facts and circumstances of the case, may extend to the grant of cross-examination.*

- (5) **Adjournment max 3 times** The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: adjournment for 2 years since similar matter is sub-judice, is it possible? Yes

Provided that no such adjournment shall be granted for more than **3 times** to a person during the proceedings.

- (6) **Speaking order** The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- Analysis:* The proper officer, in his order, shall set out the relevant facts and the basis of his decision. The proper officer will pass the speaking order by incorporating the all the facts and the reasons of coming to the decision.

1 Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

2 Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

- (7) **Tax, Interest and Penalty (TIP) cannot exceed amount specified in the notice** The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice. same ground and same amount | additional grounds cannot be added
- (8) **Tax, Interest and Penalty (TIP) shall be modified as per Court Order** 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.
- (9) **Payment of interest is mandatory if admitted** The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability. But where payment of interest is disputed, it shall be determined either u/s 73/74 or follow procedure u/s 75(12)
- (10) ³[The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in section 73(10) or in section 74(10) or in section 74A(7).] Deemed conclusion
- (11) **One party decision which effects the other party pending issue then the period of exclusion** An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue **in some other proceedings** and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in section 73(10) ^{3 years} or section 74(10) ^{5 years} ⁴[or section 74A(7)] where proceedings are initiated by way of issue of a show cause notice under the said sections.

Analysis

It may so happen that the issue forming the subject matter of a show cause notice has already been decided against the Revenue by an Appellate Authority, Appellate Tribunal, or High Court in another case. In such circumstances, the Department may prefer a further appeal before the higher appellate forum or court on the ground that the decision is prejudicial to the interest of Revenue and may seek to keep similar matters pending until the issue attains finality.

Accordingly, the period intervening between the decisions of:

1. the Appellate Authority and the Appellate Tribunal;
2. the Appellate Tribunal and the High Court; or
3. the High Court and the Supreme Court,

is liable to be excluded while computing the limitation period for issuance of notice or passing of order. Consequently, the time limits prescribed under Section 73(10) or Section 74(10) stand correspondingly extended.

3 Substituted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.. Prior to it's substitution, it read as under:

The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in section 73(10) or within 5 years as provided for in section 74(10).

4 Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

Significantly, such extension may operate even where the case of the concerned person is not itself pending before any appellate forum or court, but the very same issue is pending adjudication in another matter elsewhere in India. As a result, the adjudicating authority may effectively obtain an indefinite extension of time pending final determination of the issue by the higher judicial forum.

- (12) **Recovery of self assessed tax only u/s 79** Notwithstanding anything contained in section 73 or section 74 ⁵[or section 74A], where any amount of *self-assessed tax* in accordance with a return furnished under section 39 ^{GSTR 3B} remains unpaid ^{never possible since GSTR 3B cannot be filed without payment of tax}, either wholly or partly, **or any amount of interest payable on such tax remains unpaid** ^{interest on delayed reporting of invoice}, the same shall be recovered under the provisions of section 79. ^{DRC 01B / DRC 01D shall be issued electronically | also refer Rule 142B and Rule 88C}

⁶[**Explanation.**—For the purposes of this sub-section, the expression “self-assessed tax” ^{and admitted} shall include the tax payable in respect of details of outward supplies furnished under section 37 ^{GSTR 1}, but not included in the return furnished under section 39 ^{GSTR 3B}] ^{Effective from 01.01.2022 | Penalty always u/s 122.}

- (13) **No double penalty** Where any penalty is imposed under section 73 or section 74 ⁷[or section 74A], no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. ^{Theory of double jeopardy or same offence}

⁵ Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.

⁶ Inserted by Section 114 of Finance Act 2021 and made effective from 01.01.2022 vide NN 39/2021 CT dated 21.12.2021

⁷ Inserted by Finance Act 2024 (2) and effective from 01.11.2024 vide NN 17/2024 dated 27.09.2024.