

Demands and Recovery

Q 1. Which are the applicable sections for the purpose of recovery of tax short paid or not paid or amount erroneously refunded or input tax credit wrongly availed or utilized?

Ans. Section 73 deals with the cases where there is no invocation of fraud/suppression/mis-statement etc. Section 74 deals with cases where the provisions related to fraud/suppression/mis-statement etc. are invoked.

Q 2. What if person chargeable with tax, pays the amount along with interest before issue of show cause notice under section 73?

Ans. In such cases notice shall not be issued by the proper officer. {sec.73 (6)}

Q 3. If show cause notice is issued under Section 73 and thereafter the noticee makes payment along with applicable interest, is there any need to adjudicate the case?

Ans. If the person pays the tax along with interest within 30 days of issue of notice, no penalty shall be payable and all proceedings in respect of such notice shall be deemed to be concluded. {sec.73 (8)}

Q 4. What is the relevant date for issue of Show Cause Notice?

Ans.

(i) In case of section 73 (cases other than fraud/ suppression of facts/willful misstatement), the relevant date shall be counted from the due date for filing of annual return for the financial year to which demand relates to.

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The SCN has to be adjudicated within a period of three years from the due date of filing of annual return. The SCN is required to be issued at least three months prior to the time limit set for adjudication. {sec.73(2&10)}

(ii) In case of section 74 (cases involving fraud/ suppression of facts/ willful misstatement), the relevant date shall be counted from the due date for filing of annual return for the financial year to which demand relates to. The SCN has to be adjudicated within a period of five years from the due date of filing of annual return. The SCN is required to be issued at least six months prior to the time limit set for adjudication. {sec.74(2&10)}

Q 5. Is there any time limit for adjudication the cases?

Ans:

(i) In case of section 73 (cases other than fraud/ suppression of facts/ willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to or the date of erroneous refund/ITC wrongly availed. {sec.73(10)}

(ii) In case of section 74 (cases of fraud/ suppression of facts/ willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to or the date of erroneous refund/ITC wrongly availed. {sec.74(10)}

Q 6. Is there any immunity to a person chargeable with tax in cases of fraud/ suppression of facts/ willful misstatement, who pays the amount of demand along-with interest before issue of notice?

Ans. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% percent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid. {sec. 74(6)}

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Q 7. If notice is issued under Section 74 and thereafter the noticee makes payment, is there any need to adjudicate the case?

Ans. Where the person to whom a notice has been issued under sub-section (1) of section 74, pays the tax along with interest with penalty equal to 25% of such tax within 30 days of issue of notice, all proceedings in respect of such notice shall be deemed to be concluded. {sec.74 (8)}

Q 8. In case a notice is adjudicated under Section 74 and order issued confirming tax demand and penalty, does the noticee have any option to pay reduced penalty?

Ans. Yes. if any person pays the tax determined by the order along with interest and a penalty equivalent to 50% of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded. {sec.74 (11)}

Q 9. What will happen in cases where notice is issued but order has not been passed under section 73 & 74 within time specified for adjudication under these sections?

Ans. Section 75 (10) provides for deemed conclusion of the adjudication proceedings if the order is not issued within time limit prescribed under these sections.

Q 10. What happens if a person collects tax from another person but does not deposit the same with Government?

Ans. It is mandatory to pay amount, collected from other person representing tax under this act, to the government. For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to such amount. {Sec.76 (1&2)}

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Q 11. In case the person does not deposit tax collected in contravention of Section 76(1), what is the proper course of action to be taken?

Ans. SCN may be issued and if so, an order shall be passed following Principles of natural justice within one year of date of issue of such notice. {sec.76 (2 to 6)}

Q 12. What is the time limit to issue notice in cases under Section 76 i.e. taxes collected but not paid to Government?

Ans. There is no time limit. Notice can be issued on detection of such cases without any time limit.

Q 13. What are the modes of recovery of tax available to the proper officer?

Ans. The proper officer may recover the dues in following manner:

a) Deduction of dues from the amount owned by the tax authorities payable to such person.

b) Recovery by way of detaining and selling any goods belonging to such person;

c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;

d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

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e)Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.

(f)By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.

(g)Through enforcing the bond /instrument executed under this Act or any rules or regulations made thereunder.

(h)CGST arrears can be recovered as an arrear of SGST and vice-versa. {sec.79 (1,2,3,4)}

Q 14. Whether the payment of tax dues can be made in installments?

Ans. On receipt of any such request, Commissioner/Chief Commissioner may extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twenty four, subject to payment of interest under section 50 with such limitations and conditions as may be prescribed. However, where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become payable and recovered without any further notice. {sec.80}

Q 15. What is the course of recovery in cases where the tax demand confirmed is enhanced in appeal/ revision proceedings?

Ans. The notice of demand is required to be served only in respect of the enhanced dues. In so far as the amount already confirmed prior to disposal of appeal/revision, the recovery proceedings may be continued from the stage at which such proceedings stood immediately before such disposal of appeal/revision. (Sec.84(a))

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Q 16. If a taxable person with pending tax dues, transfers his business to another person, what would happen to the tax dues?

Ans. The person, to whom the business is transferred, shall jointly and severally be liable to pay the tax, interest or penalty due from the taxable person up to the time of such transfer, whether such dues has been determined before such transfer, but has remained unpaid or is determined thereafter. {Sec. 85(1)}

Q 17. What happens to tax dues where the Company (taxable person) goes into liquidation?

Ans. When any company is wound up, every appointed receiver of assets ("Liquidator") shall give intimation of his appointment to Commissioner within 30 days. On receipt of such intimation Commissioner may notify amount sufficient to recover tax liabilities/dues to the liquidator within 3 months. {Sec. 88(1,2)}

Q 18. What is the liability of directors of the Company (taxable person) under liquidation?

Ans: When any private company is wound up and any tax or other dues determined whether before or after liquidation that remains unrecovered, every person who was a director of the company during the period for which the tax was due, shall jointly and severally be liable for payment of dues unless he proves to the satisfaction of the Commissioner that such non-recovery is not attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company. {Sec.88(3),89}

Q 19. What is the liability of partners of a partnership firm (Taxable person) to pay outstanding tax?

Ans. Partners of any firm shall jointly and severally be liable for payment of any tax, interest or penalty.

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Firm/ partner shall intimate the retirement of any partner to the Commissioner by a notice in writing.

Liability to pay tax, interest or penalty up to the date of such retirement, whether determined on that date or subsequently, shall be on such partner.

If no intimation is given within one month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner. {Sec.90}

Q 20. What happens to the tax liability of a taxable person, whose business is carried on by any guardian/ trustee or agent of a minor?

Ans. Where the business in respect of which any tax is payable is carried on by any guardian / trustee / agent of a minor or other incapacitated person on behalf of and for the benefit of such minor/incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian / trustee / agent. {Sec.91}

Q 21. What happens when the estate of a taxable person is under the control of Court of Wards?

Ans. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/ Administrator General / Official Trustee / Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General / Official Trustee / Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person. {Sec.92}

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