

**Law and Provisions under CGST**  
**Chapter 15 – DEMANDS AND RECOVERY**

**15.0 DEMANDS AND RECOVERY** – The provisions related to Demands and Recovery - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts, Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts, General provisions relating to determination of tax, Tax collected but not paid to Government, Tax wrongfully collected and paid to Central Government or State Government, Initiation of recovery proceedings, Recovery of tax, Payment of tax and other amount in instalments, Transfer of property to be void in certain cases, Tax to be first charge on property, Provisional attachment to protect revenue in certain cases and Continuation and validation of certain recovery proceedings are covered under Chapter XV of the CGST Act 2017 from Section 73 to Section 84.

The Central Government has appointed the 1st day of July, 2017, as the date on which the provisions of these sections came in to force vide Notification No. 9/2017- Central Tax dated 28.06.2017.

<b>Chapter XV of the CGST Act 2017 - Demands and Recovery</b>	
<b>Section</b>	<b>Particulars</b>
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.
Section 75	General provisions relating to determination of tax
Section 76	Tax collected but not paid to Government
Section 77	Tax wrongfully collected and paid to Central Government or State Government.
Section 78	Initiation of recovery proceedings
Section 79	Recovery of tax
Section 80	Payment of tax and other amount in instalments
Section 81	Transfer of property to be void in certain cases

Section 82	Tax to be first charge on property
Section 83	Provisional attachment to protect revenue in certain cases
Section 84	Continuation and validation of certain recovery proceedings

<b>CGST Rules 2017 - Demands and Recovery</b>	
<b>Rules</b>	<b>Particulars</b>
Rule 142	Notice and order for demand of amounts payable under the Act
Rule 142A	Procedure for recovery of dues under existing laws
Rule 143	Recovery by deduction from any money owed
Rule 144	Recovery by sale of goods under the control of proper officer
Rule 144A	Recovery of penalty by sale of goods or conveyance detained or seized in transit
Rule 145	Recovery from a third person
Rule 146	Recovery through execution of a decree, etc.
Rule 147	Recovery by sale of movable or immovable property
Rule 148	Prohibition against bidding or purchase by officer
Rule 149	Prohibition against sale on holidays
Rule 150	Assistance by police
Rule 151	Attachment of debts and shares, etc.
Rule 152	Attachment of property in custody of courts or Public Officer
Rule 153	Attachment of interest in partnership
Rule 154	Disposal of proceeds of sale of goods or conveyance and movable or immovable property
Rule 155	Recovery through land revenue authority
Rule 156	Recovery through court
Rule 157	Recovery from surety
Rule 158	Payment of tax and other amounts in instalments
Rule 159	Provisional attachment of property
Rule 160	Recovery from company in liquidation
Rule 161	Continuation of certain recovery proceedings

<b>Forms - Demands and Recovery</b>	
<b>Forms</b>	<b>Particulars</b>
FORM GST DRC - 01	Summary of Show Cause Notice

FORM GST DRC-01A	Intimation of tax ascertained as being payable under section 73(5)/74(5)
FORM GST DRC - 02	Summary of Statement
FORM GST DRC - 03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement
FORM GST DRC - 04	Acknowledgement of acceptance of payment made voluntarily
FORM GST DRC - 05	Intimation of conclusion of proceedings
FORM GST DRC - 06	Reply to the Show Cause Notice
FORM GST DRC - 07	Summary of the order
FORM GST DRC - 07 A	Summary of the order creating demand under existing laws
FORM GST DRC - 08	Summary of Rectification /Withdrawal Order
FORM GST DRC - 08 A	Amendment/Modification of summary of the order creating demand under existing laws
FORM GST DRC - 09	Order for recovery through specified officer under section 79
FORM GST DRC - 10	Notice for Auction of Goods under section 79 (1) (b) of the Act
FORM GST DRC - 11	Notice to successful bidder
FORM GST DRC - 12	Sale Certificate
FORM GST DRC - 13	Notice to a third person under section 79(1) (c)
FORM GST DRC - 14	Certificate of Payment to a Third Person
FORM GST DRC - 15	APPLICATION BEFORE THE CIVIL COURT REQUESTING EXECUTION FOR A DECREE
FORM GST DRC - 16	Notice for attachment and sale of immovable/movable goods/shares under section 79
FORM GST DRC - 17	Notice for Auction of Immovable/Movable Property under section 79(1) (d)
FORM GST DRC - 18	Certificate action under clause (e) of sub-section (1) section 79
FORM GST DRC - 19	Application to the Magistrate for Recovery as Fine
FORM GST DRC - 20	Application for Deferred Payment/ Payment in Instalments
FORM GST DRC - 21	Order for acceptance/rejection of application for deferred payment / payment in instalments
FORM GST DRC - 22	Provisional attachment of property under section 83
FORM GST DRC-22A	Application for filing objection against provisional attachment of property

FORM GST DRC - 23	Restoration of provisionally attached property / bank account under section 83
FORM GST DRC - 24	Intimation to Liquidator for recovery of amount
FORM GST DRC - 25	Continuation of Recovery Proceedings

**15.1 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts. [Section 73]**

<b>Section 73(1)</b>	01.07.2017 to till date	<p><b>Power to issue show cause notice 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</b></p> <p>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, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice 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 leviable under the provisions of this Act or the rules made thereunder.</p>
<b>Section 73(2)</b>	01.07.2017 to till date	<p><b>Time limit to issue show cause notice under Section 73(1) - At least three months prior to the time limit specified in sub-section (10) for issuance of order</b></p> <p>The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.</p>
<b>Section 73(3)</b>	01.07.2017 to till date	<p><b>The proper officer to serve a statement for other periods where a notice has been issued for any period under sub-section (1)</b></p> <p>Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, 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 sub-section (1), on the person chargeable with tax.</p>

<p><b>Section 73(4)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Service of statement shall be deemed to be service of notice</b></p> <p>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.</p>
<p><b>Section 73(5)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Payment of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer before service of notice or statement and information to the proper officer in writing of such payment</b></p> <p>The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 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.</p>
<p><b>Section 73(6)</b></p>	<p>01.07.2017 to till date</p>	<p><b>No service of notice under sub-section (1) or the statement under sub-section (3) on receipt of information under sub section (5) in respect of the tax so paid or any penalty payable under GST Act</b></p> <p>The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.</p>
<p><b>Section 73(7)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Issuance of notice in respect of the amount which falls short of the amount actually payable</b></p> <p>Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.</p>
<p><b>Section 73(8)</b></p>	<p>01.07.2017 to till date</p>	<p><b>No penalty to be payable where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice and all proceedings in respect of the said notice shall be deemed to be concluded.</b></p> <p>Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.</p>

<p><b>Section 73(9)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Issuance of order for determination of the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher.</b></p> <p>The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.</p>
<p><b>Section 73(10)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Time limit for issuance of order under sub section 73(9) - Three years from the due date for furnishing of annual return for the financial year</b></p> <p>The proper officer shall issue the order under sub-section (9) within three 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 three years from the date of erroneous refund.</p>
<p><b>Section 73(11)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Payment of penalty 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.</b></p> <p>Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) 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.</p>

**15.1.1.1 Departmental Notifications – The central tax officer and the officers subordinate to him to exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act.**

[Notification No. 79/2018 – Central Tax dated 31st December, 2018](#) - The Board has amended [Notification No. 2/2017-Central Tax dated 19th June, 2017](#), namely:-

In the said notification, in paragraph 3, the following shall be inserted, namely :-

“Notwithstanding anything contained in this notification, the central tax officer specified in column (3) of Table I and the officers subordinate to him shall exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act throughout the territorial jurisdiction of the corresponding central tax officer specified in column (2) of the said Table in respect of those cases as may be assigned by the Board”.

**15.1.1.2 Departmental Notifications – Extention of dates of specified compliances under section 73 of CGST Act – Relevant extracts**



[Notification No. 35/2020 – Central Tax dated 3rd April, 2020](#) effective from 20th day of March, 2020 - in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies, as under,-

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020, including for the purposes of—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

**Further,** [Notification No. 13/2022-Central Tax dated 5th July 2022](#) effective from 1st day of March, 2020 - in partial modification of the [Notification No. 35/2020 – Central Tax dated 3rd April, 2020](#) the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under subsection (9) of section 73 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 30th day of September, 2023;

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under subsection (9) of section 73 of the said Act, for recovery of erroneous refund;

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

**Further,** [Notification No. 09/2023- Central Tax dated 31st March, 2023](#) - The Government, on the recommendations of the Council, has, extended the time limit specified under subsection (10) of section 73 for issuance of order under sub-section (9) of section 73 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, up to the 31st day of December, 2023;

(ii) for the financial year 2018-19, up to the 31st day of March, 2024;

(iii) for the financial year 2019-20, up to the 30th day of June, 2024.

**15.1.2.1 Departmental Clarifications - Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017 - [Circular No. 3/3/2017-GST, dated 5th July, 2017](#)**

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, has issued [Circular No. 3/3/2017-GST, dated 5th July, 2017](#) to assign the officers mentioned in Column (2) of the Table below, the functions other than Registration and Composition as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:-

**Table**

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub- section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub- sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65



		<p>vi. Sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of Section 74</p> <p>vii. Sub-sections (2), (3), (6) and (8) of Section 76</p> <p>viii. Sub-section (1) of Section 79</p> <p>ix. Section 123</p> <p>x. Section 127</p> <p>xi. Sub-section (3) of Section 129</p> <p>xii. Sub- sections (6) and (7) of Section 130</p> <p>xiii. Sub- section (1) of Section 142</p> <p>xiv. Sub-rule (2) of Rule 82</p> <p>xv. Sub-rule (4) of Rule 86</p> <p>xvi. Explanation to Rule 86</p> <p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rule (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p>
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		<p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	<p>i. Sub- section (6) of Section 35</p> <p>ii. Sub-sections (1) and (3) of Section 61</p> <p>iii. Sub-section (1) of Section 62</p> <p>iv. Sub-section (7) of Section 65</p> <p>v. Sub-section (6) of Section 66</p> <p>vi. Sub-section (11) of Section 67</p> <p>vii. Sub-section (1) of Section 70</p> <p>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</p> <p>ix. Sub-rule (6) of Rule 56</p> <p>x. Sub-rules (1), (2) and (3) of Rule 99</p> <p>xi. Sub-rule (1) of Rule 132</p> <p>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</p> <p>xiii. Rule 150</p>
5.	Inspector of Central Tax	<p>i. Sub-section (3) of Section 68</p> <p>ii. Sub- rule (17) of Rule 56</p>

	iii. Sub- rule (5) of Rule 58
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**15.1.2.2 Departmental Clarifications - Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017 - [Circular No. 31/05/2018-GST dated 9th February 2018](#)**

The Board, vide [Circular No.1/1/2017-GST dated 26th June, 2017](#), assigned proper officers for provisions relating to registration and composition levy under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) and the rules made thereunder. Further, vide [Circular No. 3/3/2017-GST, dated 5th July, 2017](#), the proper officers for provisions other than registration and composition under the CGST Act were assigned. In the latter Circular, the Deputy or Assistant Commissioner of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 74 while the Superintendent of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 73 of the CGST Act.

The Board has issued [Circular No. 31/05/2018-GST dated 9th February 2018](#) wherein It has now been decided by the Board that Superintendent of Central Tax shall also be empowered to issue show cause notices and orders under Section 74 of the CGST Act. Accordingly, the following entry has been added to the item at Sl. No. 4 of the Table on page number 3 of [Circular No. 3/3/2017-GST, dated 5th July, 2017](#), namely :-

Sl. No.	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
4.	Superintendent of Central Tax	viii(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

Further, Board vide its [Circular No. 31/05/2018-GST dated 9th February 2018](#), in light of sub-section (2) of section 5 of the CGST Act, whereby an officer of central tax may exercise the powers and discharge the duties conferred or imposed under the CGST Act on any other officer of central tax who is subordinate to him, has removed the following entry from the Table on page number 2 of [Circular No. 3/3/2017-GST dated 5th July, 2017](#) :-

Sl. No.	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
3.	Deputy or Assistant Commissioner of Central Tax	vi. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

In other words, all officers up to the rank of Additional / Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73 and 74 of the CGST Act. Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 as well, as per Section 3 read with Section 20 of the said Act.

Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax need to be prescribed. Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

**Table**

<b>Sl. No.</b>	<b>Officer of Central Tax</b>	<b>Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act</b>	<b>Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act</b>	<b>Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
1.	Superintendent of Central Tax	Not exceeding ₹ 10 lakhs	Not exceeding ₹ 20 lakhs	Not exceeding ₹ 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakhs and not exceeding ₹ 1 crore	Above ₹ 20 lakhs and not exceeding ₹ 2 crores	Above ₹ 20 lakhs and not exceeding ₹ 2 crores

3.	Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit
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The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

Notwithstanding anything contained in para 6 above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than ₹ 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer."

In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

**15.1.2.2A Departmental Clarifications - Amendment to [Circular No. 31/05/2018-GST](#), dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017- [Circular No.169/01/2022-GST dated 12th March, 2022](#)**

Vide [Notification No. 02/2022-Central Tax dated 11th March, 2022](#), para 3A has been inserted in the [Notification No. 2/2017-Central Tax dated 19th June, 2017](#), to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence. Consequently, para 6 and 7 of the [Circular No. 31/05/2018-GST, dated 9th February, 2018](#) are hereby amended as below:

“6. The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as “DGGI”) shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide [Notification No. 02/2022-Central Tax dated 11th March, 2022](#). Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide [Notification No. 02/2022-Central Tax dated 11th March, 2022](#). Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

**Table**

Sl. No.	Central Tax Zone in whose jurisdiction the location of the principal place of business of the noticee having highest amount of demand of tax involved falls	Central Tax Commissionerate whose Additional Commissioner or Joint Commissioner shall adjudicate show cause notices issued by officers of DGGI
(1)	(2)	(3)
1.	Ahmedabad	Ahmedabad South
2.	Vadodara	
3.	Bhopal	Bhopal
4.	Nagpur	
5.	Chandigarh	Chandigarh
6.	Panchkula	
7.	Chennai	Chennai South
8.	Bengaluru	

9.	Thiruvananthapuram	
10.	Delhi	Delhi North
11.	Jaipur	
12.	Guwahati	Guwahati
13.	Hyderabad	Rangareddy
14.	Visakhapatnam (Amaravathi)	
15.	Bhubaneshwar	
16.	Kolkata	Kolkata North
17.	Ranchi	
18.	Lucknow	Lucknow
19.	Meerut	
20.	Mumbai	Thane
21.	Pune	

7.2 In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.

7.3 In respect of show cause notices issued by the officers of DGGI prior to issuance of [Notification No. 02/2022-Central Tax dated 11th March, 2022](#), involving cases mentioned in para 7.1 above and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 above, by issuing corrigendum to such show cause notices.”

**15.1.2.3 Departmental Clarifications - Clarification on refund related issues- [Circular No. 59/33/2018-GST dated 4th September, 2018](#)**

Various representations have been received seeking clarification on issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as detailed hereunder:

**2. Submission of invoices for processing of claims of refund:**

2.1 It was clarified vide [Circular No. 37/11/2018-GST dated 15th March, 2018](#) that since the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that



invoices are scrutinized. Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax.

2.2. In this regard, trade and industry have represented that such requirement is cumbersome and increases their compliance cost, especially where the number of invoices is large.

2.3. In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the account of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.

**15.1.2.4 Departmental Clarifications - Clarification on certain issues (sale by government departments to unregistered person; levability of penalty under section 73(11) of the CGST Act; rate of tax in case of debit notes / credit notes issued under section 142(2) of the CGST Act; applicability of [notification No. 50/2018-Central Tax](#); valuation methodology in case of TCS under Income Tax Act and definition of owner of goods) related to GST- [Circular No. 76/50/2018-GST dated 31st December, 2018](#)**

Various representations have been received seeking clarification on certain issues under the GST laws. In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") hereby clarifies the issues as below:

Sl. No.	Issue	Clarification
1.	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?	1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.

		<p>2. Vide <a href="#">Notification No. 36/2017-Central Tax (Rate)</a> and <a href="#">Notification No. 37/2017-Integrated Tax (Rate)</a> both dated 13.10.2017, it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any <b>registered person</b>, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.</p> <p>3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an <b>unregistered person</b>.</p> <p>4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under <a href="#">notification No. 36/2017-Central Tax (Rate)</a> and <a href="#">notification No. 37/2017- Integrated Tax (Rate)</a> both dated 13.10.2017.</p> <p>5. In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an <b>unregistered person</b> subject to the provisions of sections 22 and 24 of the CGST Act.</p>
2.	Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in <b>FORM GSTR-3B</b> has been filed after the due date of filing such return?	<p>1. 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.</p> <p>2. It may be noted that a show cause notice (SCN for short) 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</p>

		<p>only when the provisions of section 73 are invoked.</p> <p>3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in <b>FORM GSTR-3B</b> because tax along with 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 section 73(11) of the CGST Act 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 under section 125 of the CGST Act may be imposed after following the due process of law.</p>
<p>3.</p>	<p>In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?</p>	<p>1. It may be noted that as per the provisions of section 142(2) of the CGST Act, in case of revision of prices of any goods or services or both on or after the appointed day (i.e., 01.07.2017), a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the CGST Act.</p> <p>2. It is accordingly clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.</p>
<p>4.</p>	<p>Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of <a href="#">notification No. 50/2018-Central Tax dated 13.09.2018</a>.</p>	<p>1. A doubt has arisen about the applicability of long line mentioned in clause (a) of <a href="#">notification No. 50/2018- Central Tax dated 13.09.2018</a>.</p> <p>2. It is clarified that the long line written in clause (a) in <a href="#">notification No. 50/2018- Central Tax dated 13.09.2018</a> is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source.</p> <p>3. In other words, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by</p>

		any Government in which fifty one per cent. or more participation by way of equity or control is with the Government.
5.	What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?	<p>1. Section 15(2) of CGST Act specifies that the value of supply shall include “any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.”</p> <p>2. It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.</p>
6.	Who will be considered as the 'owner of the goods' for the purposes of section 129(1) of the CGST Act?	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

**15.1.2.5 Departmental Clarifications - Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange - [Circular No. 106/25/2019-GST dated 29th June, 2019](#)**

The Government vide [notification no. 11/2019-Central Tax \(Rate\)](#), [10/2019-Integrated Tax \(Rate\)](#) and [11/2019-Union territory Tax \(Rate\)](#) all dated 29.06.2019 issued in exercise of powers under section 55 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the „CGST Act“) has notified that the retail outlets established at departure area of the international airport beyond immigration counters shall be entitled to claim refund of all applicable Central tax, Integrated tax, Union territory tax and Compensation cess paid by them on inward supplies of indigenous goods received by them for the purposes of subsequent supply of goods to outgoing international tourists i.e. to a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes against foreign exchange (hereinafter referred to as the “eligible passengers”). Identical notifications have been issued by the State or Union territory Governments under the respective State Goods and Services Tax Acts (hereinafter referred to as the “SGST Act”) or Union Territory Goods and Services Tax Acts (hereinafter referred to as the “UTGST Act”) also to provide for refund of applicable State or Union territory tax.

2. With a view to ensuring expeditious processing of refund claims, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby specifies the conditions, manner and procedure for filing and processing of such refund claims in succeeding paras.

**3. Duty Free Shops and Duty Paid Shops:** -It has been recognized that international airports, house retail shops of two types - „Duty Free Shops“ (hereinafter referred to as “DFS”) which are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962 (hereinafter referred to as the “Customs Act”) and duty paid indigenous goods and „Duty Paid Shops“ (hereinafter referred to as “DPS”) retailing duty paid indigenous goods.

**4. Procurement and supply of imported / warehoused goods:** - The procedure for procurement of imported / warehoused goods is governed by the provisions contained in Customs Act. The procedure and applicable rules as specified under the Customs Act are required to be followed for procurement and supply of such goods.

**5. Procurement of indigenous goods:** - Under GST regime there is no special procedure for procurement of indigenous goods for sale by DFS or DPS. Therefore, all indigenous goods would have to be procured by DFS or DPS on payment of applicable tax when procured from the domestic market.

**6. Supply of indigenous goods by DFS or DPS established at departure area of the international airport beyond immigration counters (hereinafter referred to as “the retail outlets”) to eligible passengers:** The sale of indigenous goods procured from domestic market by retail outlets to an eligible passenger is a “supply” under GST law and is subject to levy of Integrated tax but the same has been exempted vide [notification No. 11/2019-Integrated Tax \(Rate\)](#) and [01/2019-Compensation Cess \(Rate\)](#) both dated 29.06.2019. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund as per procedure explained in succeeding paragraphs.

## **7. Who is eligible for refund:**

**7.1 Registration under CGST Act:** The retail outlets applying for refund shall be registered under the provisions of section 22 of the CGST Act read with the rules made thereunder and shall have a valid GSTIN.

**7.2 Location of retail outlets:** Such retail outlets shall be established at departure area of the international airport beyond immigration counters and shall be entitled to claim a refund of all applicable Central tax, State tax, Integrated tax, Union territory tax and Compensation cess paid by them on all inward supplies of indigenous goods received for the purposes of subsequent supply of such goods to the eligible passengers.

## **8. Procedure for applying for refunds:**

**8.1. Maintenance of Records:** The records with respect to duty paid indigenous goods being brought to the retail outlets and their supplies to eligible passengers shall be maintained as per Annexure A in electronic form. The data shall be kept updated, accurate and complete at all times by such retail outlets and shall be available for inspection/verification of the proper officer of central tax at any time. The electronic records must incorporate the feature of an audit trail, which means a secure, computer generated, time stamped record that allows for reconstruction of the course of events relating to the creation, modification or deletion of an electronic record and includes actions at the record or system level, such as, attempts to access the system or delete or modify a record.



**8.2. Invoice-based refund:** It is clarified that the refund to be granted to retail outlets is not on account of the accumulated input tax credit but is refund based on the invoices of the inward supplies of indigenous goods received by them. As stated in para 6 above, the supply made by such retail outlets to eligible passengers has been exempted vide [notification No. 11/2019-Integrated Tax \(Rate\)](#) and [01/2019-Compensation Cess \(Rate\)](#) both dated 29.06.2019 and therefore such retail outlets will not be eligible for input tax credit of taxes paid on such inward supplies and the same will have to be reversed in accordance the provisions of the CGST Act read with the rules made thereunder. It is also clarified that no refund of tax paid on input services, if any, will be granted to the retail outlets.

8.3. Any supply made to an eligible passenger by the retail outlets without payment of taxes by such retail outlets shall require the following documents / declarations:

- (a) Details of the Passport (via Passport Reading Machine);
- (b) Details of the Boarding Pass (via a barcode scanning reading device);
- (c) A passenger declaration as per Annexure B;
- (d) A copy of the invoice clearly evidencing that no tax was charged from the eligible passenger by the retail outlet.

8.4. The retail outlets will be required to prominently display a notice that international tourists are eligible for purchase of goods without payment of domestic taxes.

8.5. Manual filing of refund claims: In terms of rule 95A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the „CGST Rules“) as inserted vide [notification No. 31/2019-Central Tax dated 28.06.2019](#), the retail outlets are required to apply for refund on a monthly or quarterly basis depending upon the frequency of furnishing of return in FORM GSTR-3B. Till the time the online utility for filing the refund claim is made available on the common portal, these retail outlets shall apply for refund by filing an application in FORM GST RFD-10B , as inserted vide [notification No. 31/2019-Central Tax dated 28.06.2019](#) manually to the jurisdictional proper officer. The said refund application shall be accompanied with the following documents:

- (i) An undertaking by the retail outlets stating that the indigenous goods on which refund is being claimed have been received by such retail outlets;
- (ii) An undertaking by the retail outlets stating that the indigenous goods on which refund is being claimed have been sold to eligible passengers;
- (iii) Copies of the valid return furnished in FORM GSTR – 3B by the retail outlets for the period covered in the refund claim;
- (iv) Copies of FORM GSTR-2A for the period covered in the refund claim; and
- (v) Copies of the attested hard copies of the invoices on which refund is claimed but which are not reflected in FORM GSTR-2A.

## **9. Processing and sanction of the refund claim :**

9.1. Upon receipt of the complete application in FORM GST RFD-10B, an acknowledgement shall be issued manually by the proper officer within 15 days of the receipt of application in FORM GST RFD-02. In case of any deficiencies or any additional information is required, the same shall be communicated to the retail outlets by issuing a deficiency memo manually in FORM GST RFD-03 by the proper officer within 15 days of the receipt of the refund application.

Only one deficiency memo should be issued against one refund application which is complete in all respects.

9.2. The proper officer shall validate the GSTIN details on the common portal to ascertain whether the return in FORM GSTR- 3B has been filed by the retail outlets. The proper officer may scrutinize the details contained in FORM RFD-10B, FORM GSTR-3B and FORM GSTR-2A. The proper officer may rely upon FORM GSTR-2A as an evidence of the account of the supply received by them in relation to which the refund has been claimed by the retail outlets. Normally, officers are advised not to call for hard copies of invoices or details contained in Annexure A. As clarified in clause (v) of Para 8.5 above, it is reiterated that the retail outlets would be required to submit hard copies of only those invoices of inward supplies that have not been reflected in FORM GSTR-2A.

9.3. The proper officer shall issue the refund order manually in FORM GST RFD-06 along with the manual payment advice in FORM GST RFD-05 for each head i.e., Central tax/State tax/Union territory tax/Integrated tax/Compensation Cess. The amount of sanctioned refund along with the bank account details of the retail outlets shall be manually submitted in the PFMS system by the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to the PAO for disbursement of the said amount.

9.4. Where any refund has been made in respect of an invoice without the tax having been paid to the Government or where the supply of such goods was not made to an eligible passenger, such amount refunded shall be recovered along with interest as per the provisions contained in the section 73 or section 74 of the CGST Act, as the case may be.

9.5. It is clarified that the retail outlets will apply for refund with the jurisdictional Central tax/State tax authority only, however, the payment of the sanctioned refund amount in relation to Central tax / Integrated tax / Compensation Cess shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax / Union Territory Tax shall be made by the State tax/Union Territory tax authority. It therefore becomes necessary that the refund order issued by the proper officer of Central Tax is duly communicated to the concerned counter-part tax authority within seven days for the purpose of disbursement of the remaining sanctioned refund amount. The procedure outlined in para 6.0 of [Circular No.24/24/2017-GST dated 21stDecember 2017](#) should be followed in this regard.

10. The scheme shall be effective from 01.07.2019 and would be applicable in respect of all supplies made to eligible passengers after the said date. In other words, retail outlets would be eligible to claim refund of taxes paid on inward supplies of indigenous goods received by them even prior to 01.07.2019 as long as all the conditions laid down in Rule 95A of the CGST Rules and this circular are fulfilled.

**15.1.2.5A Departmental Clarifications - Withdrawal of [Circular No. 106/25/2019-GST dated 29.06.2019](#)- [Circular No. 176/08/2022-GST dated 6th July, 2022](#)**

Kind attention is invited to [Circular No. 106/25/2019-GST dated 29.06.2019](#) wherein certain clarifications were given in relation to rule 95A, inserted in the Central Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.



2. The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification [No. 14/2022-Central Tax, dated 05.07.2022](#). Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, ab-initio, [Circular No 106/25/2019-GST dated 29th June, 2019](#).

**15.1.2.6 Departmental Clarifications - Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices— [Circular No. 171/03/2022-GST dated 6th July, 2022](#)**

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder.

Sl. No.	Issues	Clarification
1.	<p>In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</p> <p>Also, whether any penal action can be taken against registered person 'A' in such cases.</p>	<p>Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.</p> <p>The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>

<p>2.</p>	<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</p>
<p>3.</p>	<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)((i)) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as</p>

	also for taking/ utilizing input tax credit without actual receipt of goods and/or services.
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

**15.1.2.7 Departmental Clarifications - Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19- [Circular No. 183/15/2022-GST dated 27th December, 2022](#)**

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of

ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

Sl. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in <b>FORM GSTR-2A</b> of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in <b>FORM GSTR-2A</b> may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed <b>FORM GSTR-1</b> as well as return in <b>FORM GSTR-3B</b> for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in <b>FORM GSTR-2A</b> of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in <b>FORM GSTR-3B</b> and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
d.	Where the supplier has filed FORM GSTR-1 as well as return in <b>FORM GSTR-3B</b> for a tax period, but he has declared the supply with wrong GSTIN of the recipient in <b>FORM GSTR-1</b> .	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx> .

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018- 19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts



and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

**15.1.2.8 Departmental Clarifications - Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation- [Circular No. 185/17/2022-GST dated 27th December, 2022](#)**

Attention is invited to sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as "noticee"), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

<i>Sl. No.</i>	<i>Issue</i>	<i>Clarification</i>
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of	<ul style="list-style-type: none"> <li>• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.</li> <li>• Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act</li> </ul>

<p>facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?</p>	<p>in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. <b>within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</b></p>
<p>2. How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?</p>	<ul style="list-style-type: none"> <li>• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act.</li> <li>• Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or</li> </ul>



		<p>input tax credit has been wrongly availed or utilized or from the date of erroneous refund.</p> <ul style="list-style-type: none"><li>• It transpires from a combined reading of these provisions that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund.</li><li>• Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which <b>show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act.</b> Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only <b>where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.</b></li></ul>
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	<ul style="list-style-type: none"><li>• In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.</li><li>• In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.</li><li>• Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of</li></ul>
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		the time period as specified in sub-section (2) of section 73.
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**15.1.3.1 Instructions - Issuance of SCNS in Time Bound Manner – [Instruction No. 02/2021-22 \[GST-INV-DR\] dated 22<sup>nd</sup> September 2021](#)**

A detailed analysis to pursue trends in cases of GST evasion & fraudulent ITC availment booked viz-a-viz number of SCNs issued against for the FY 2017-18 [w.e.f. July, 2017], 2018-19 & 2019-20, have been made and it is observed that in GST evasion cases booked and in the Fraudulent ITC cases booked, during the above mentioned period, SCNs have been issued only in few cases.

2. Apparently, cases of ITC frauds or GST evasion are covered under the provisions of Section 74 of CGST Act, 2017 [the extended period clause], However, there may be certain other situations where issuance of a notice under Section 73 of the CGST Act, 2017, is intended.

2.2 Kind attention is invited to sub-section (2) & sub-section (10) of the Section 73 of the CGST Act, 2017, which read as under:

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

(10) The proper officer shall issue the order under sub-section (9) within three 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 three years from the date of erroneous refund.

2.3 Attention is also invited to sub-section (2) & sub-section (10) of the Section 74 of the CGST Act, 2017, which read as under:

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

(10) The proper officer shall issue the order under sub-section (9) within a period of five 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 five years from the date of erroneous refund.

3. Further, the last dates of filing of the "Annual Return" under Section 44 of the CGST Act, 2017, for the Financial Years 2017-18, 2018-19 & 2019-20 are as below:

S.No.	Period	Last date to file Annual Return
1.	2017-18	05th & 7h February, 2020 (Notification no. 06/2020- Central Tax) dated 03.02.2020
2	2018-19	31st December, 2020 (Notification no. 80/2020- Central Tax) dated 28. 10.2020
3.	2019-20	31s March, 2021 (Notification no. 04/2021-Central Tax) dated 28.02.2021

4. Board has examined the matter in the background of issuance of SCNs in meagre number of cases booked/detected as mentioned above. It may be seen that the last date for filing the

Annual Returns for the FYs of 2017-18, 2018-19 & 2019-20 is already over. As a result, the time limit of three years/five years for issuance of orders under Section 73 & Section 74 of the CGST Act, 2017 has already kicked in. If the issuance of SCNs is pushed to close proximity of the end dates/last dates, it may leave very little time with the adjudicating authority to pass orders within stipulated period mentioned in sub-section (10) of Section 73/ Section 74. This might result in a situation where either the adjudicating authority is not able to pass orders within prescribed time period or quality of adjudication suffers. It is felt that the present situation warrants for extra efforts on the part of field formations and strict monitoring at supervisory level.

5. Accordingly, Board desires that Principal Director Generals / Director General(s)/ Principal Chief Commissioner(s)/Chief Commissioner(s) within their jurisdiction may take stock of the pending investigation cases/other cases which warrant issuance of show cause notices and take appropriate action to ensure timely completion of investigation(s) and issuance of SCNs well before the last date. The respective Pr. Chief Commissioners/Chief Commissioner(s) may draw an action plan so that no case is pending investigation beyond one year. Needless to mention that once SCN is issued, timely adjudication must follow.

**15.1.3.2 Instructions - Deposit of tax during the course of search, inspection or investigation – [Instruction No. 01/2022-23 \[GST – Investigation\] dated 25th May, 2022](#)**

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.

2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance

of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

5. Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

**15.2 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.. [Section 74]**

<p><b>Section 74(1)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Power to issue show cause notice 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</b></p> <p>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, he shall serve notice 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 specified in the notice.</p>
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<p><b>Section 74(2)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Time limit to issue show cause notice under Section 74(1) - At least six months prior to the time limit specified in sub-section (10) for issuance of order</b></p> <p>The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.</p>
<p><b>Section 74(3)</b></p>	<p>01.07.2017 to till date</p>	<p><b>The proper officer to serve a statement for other periods where a notice has been issued for any period under sub-section (1)</b></p> <p>Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, 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 sub-section (1), on the person chargeable with tax.</p>
<p><b>Section 74(4)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Service of statement shall be deemed to be service of notice</b></p> <p>The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 74, 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 sub-section (1) are the same as are mentioned in the earlier notice.</p>
<p><b>Section 74(5)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Payment of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer before service of notice or statement and information to the proper officer in writing of such payment</b></p> <p>The person chargeable with tax may, 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 fifteen per cent. 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.</p>
<p><b>Section 74(6)</b></p>	<p>01.07.2017 to till date</p>	<p><b>No service of notice under sub-section (1) in respect of the tax so paid or any penalty payable under GST Act</b></p> <p>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.</p>



<p><b>Section 74(7)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Issuance of notice in respect of the amount which falls short of the amount actually payable</b></p> <p>Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.</p>
<p><b>Section 74(8)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Deemed conclusion of all proceedings where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of show cause notice.</b></p> <p>Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.</p>
<p><b>Section 74(9)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Issuance of order for determination of the amount of tax, interest and penalty due from such person.</b></p> <p>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.</p>
<p><b>Section 74(10)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Time limit for issuance of order under sub section 73(9) - five years from the due date for furnishing of annual return for the financial year</b></p> <p>The proper officer shall issue the order under sub-section (9) within a period of five 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 five years from the date of erroneous refund.</p>
<p><b>Section 74(11)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Deemed conclusion of all proceedings where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of issue of show cause notice.</b></p> <p>Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.</p>

<b>Explanation</b>  <b>1</b>	01.07.2017 to 31.12.2021	For the purposes of section 73 and this section,— (i) the expression “ <b>all proceedings in respect of the said notice</b> ” shall not include proceedings under section 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 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.
	01.01.2022 to till date	For the purposes of section 73 and this section,— (i) the expression “ <b>all proceedings in respect of the said notice</b> ” shall not include proceedings under section 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 section 73 or section 74, the proceedings against all the persons liable to pay penalty under <sup>1</sup> [ sections 122 and 125] are deemed to be concluded.  <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center; margin: 0;"><b>Notes</b></p> <p>1. Substituted w.e.f. 1st day of January, 2022 for the words and figures “sections 122, 125, 129 and 130”, vide Section 113 of the <a href="#">Finance Act, 2021(NO. 13 OF 2020)</a> which has come into force on 1st January 2022 vide <a href="#">Notification No. 39/2021 – Central Tax dated 21st December, 2021</a>.</p> </div>
<b>Explanation</b>  <b>2</b>	01.07.2017 to till date	For the purposes of this Act, the expression “ <b>suppression</b> ” 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.

**15.2.1.1 Departmental Notifications – The central tax officer and the officers subordinate to him to exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act.**

[Notification No. 79/2018 – Central Tax dated 31st December, 2018](#) - The Board has amended [Notification No. 2/2017-Central Tax dated 19th June, 2017](#), namely:-

In the said notification, in paragraph 3, the following shall be inserted, namely :-

“Notwithstanding anything contained in this notification, the central tax officer specified in column (3) of Table I and the officers subordinate to him shall exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act throughout the territorial jurisdiction of the corresponding central tax officer specified in column (2) of the said Table in respect of those cases as may be assigned by the Board”.

**15.2.2.1 Departmental Clarifications - Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017 - [Circular No. 3/3/2017-GST, dated 5th July, 2017](#)**

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, has issued [Circular No. 3/3/2017-GST, dated 5th July, 2017](#) to assign the officers mentioned in Column (2) of the Table below, the functions other than Registration and Composition as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:-

**Table**

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub- section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub- sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65

		<p>vi. Sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of Section 74</p> <p>vii. Sub-sections (2), (3), (6) and (8) of Section 76</p> <p>viii. Sub-section (1) of Section 79</p> <p>ix. Section 123</p> <p>x. Section 127</p> <p>xi. Sub-section (3) of Section 129</p> <p>xii. Sub- sections (6) and (7) of Section 130</p> <p>xiii. Sub- section (1) of Section 142</p> <p>xiv. Sub-rule (2) of Rule 82</p> <p>xv. Sub-rule (4) of Rule 86</p> <p>xvi. Explanation to Rule 86</p> <p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rule (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p>
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		<p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	<p>i. Sub- section (6) of Section 35</p> <p>ii. Sub-sections (1) and (3) of Section 61</p> <p>iii. Sub-section (1) of Section 62</p> <p>iv. Sub-section (7) of Section 65</p> <p>v. Sub-section (6) of Section 66</p> <p>vi. Sub-section (11) of Section 67</p> <p>vii. Sub-section (1) of Section 70</p> <p>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</p> <p>ix. Sub-rule (6) of Rule 56</p> <p>x. Sub-rules (1), (2) and (3) of Rule 99</p> <p>xi. Sub-rule (1) of Rule 132</p> <p>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</p> <p>xiii. Rule 150</p>
5.	Inspector of Central Tax	<p>i. Sub-section (3) of Section 68</p> <p>ii. Sub- rule (17) of Rule 56</p>

		iii. Sub- rule (5) of Rule 58
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**15.2.2.2 Departmental Clarifications - Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017 - [Circular No. 31/05/2018-GST dated 9th February 2018](#)**

The Board, vide [Circular No.1/1/2017-GST dated 26th June, 2017](#), assigned proper officers for provisions relating to registration and composition levy under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) and the rules made thereunder. Further, vide [Circular No. 3/3/2017-GST, dated 5th July, 2017](#), the proper officers for provisions other than registration and composition under the CGST Act were assigned. In the latter Circular, the Deputy or Assistant Commissioner of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 74 while the Superintendent of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 73 of the CGST Act.

The Board has issued [Circular No. 31/05/2018-GST dated 9th February 2018](#) wherein It has now been decided by the Board that Superintendent of Central Tax shall also be empowered to issue show cause notices and orders under Section 74 of the CGST Act. Accordingly, the following entry has been added to the item at Sl. No. 4 of the Table on page number 3 of [Circular No. 3/3/2017-GST, dated 5th July, 2017](#), namely :-

Sl. No.	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
4.	Superintendent of Central Tax	viii(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

Further, Board vide its [Circular No. 31/05/2018-GST dated 9th February 2018](#), in light of sub-section (2) of section 5 of the CGST Act, whereby an officer of central tax may exercise the powers and discharge the duties conferred or imposed under the CGST Act on any other officer of central tax who is subordinate to him, has removed the following entry from the Table on page number 2 of [Circular No. 3/3/2017-GST dated 5th July, 2017](#) :-

Sl. No.	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)



3.	Deputy or Assistant Commissioner of Central Tax	vi. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74
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In other words, all officers up to the rank of Additional / Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73 and 74 of the CGST Act. Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 as well, as per Section 3 read with Section 20 of the said Act.

Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax need to be prescribed. Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

**Table**

<b>Sl. No.</b>	<b>Officer of Central Tax</b>	<b>Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act</b>	<b>Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act</b>	<b>Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
1.	Superintendent of Central Tax	Not exceeding ₹ 10 lakhs	Not exceeding ₹ 20 lakhs	Not exceeding ₹ 20 lakhs

2.	Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakhs and not exceeding ₹ 1 crore	Above ₹ 20 lakhs and not exceeding ₹ 2 crores	Above ₹ 20 lakhs and not exceeding ₹ 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

Notwithstanding anything contained in para 6 above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than ₹ 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer."

In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

**15.2.2.2A Departmental Clarifications - Amendment to [Circular No. 31/05/2018-GST](#), dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017- [Circular No.169/01/2022-GST dated 12th March, 2022](#)**

Vide [Notification No. 02/2022-Central Tax dated 11th March, 2022](#), para 3A has been inserted in the [Notification No. 2/2017-Central Tax dated 19th June, 2017](#), to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and

Services Tax Intelligence. Consequently, para 6 and 7 of the [Circular No. 31/05/2018-GST, dated 9th February, 2018](#) are hereby amended as below:

“6. The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as “DGGI”) shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide [Notification No. 02/2022-Central Tax dated 11th March, 2022](#). Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide [Notification No. 02/2022-Central Tax dated 11th March, 2022](#). Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

**Table**

Sl. No.	Central Tax Zone in whose jurisdiction the location of the principal place of business of the noticee having highest amount of demand of tax involved falls	Central Tax Commissionerate whose Additional Commissioner or Joint Commissioner shall adjudicate show cause notices issued by officers of DGGI
(1)	(2)	(3)
1.	Ahmedabad	Ahmedabad South
2.	Vadodara	
3.	Bhopal	Bhopal
4.	Nagpur	
5.	Chandigarh	Chandigarh
6.	Panchkula	

7.	Chennai	Chennai South
8.	Bengaluru	
9.	Thiruvananthapuram	
10.	Delhi	Delhi North
11.	Jaipur	
12.	Guwahati	Guwahati
13.	Hyderabad	Rangareddy
14.	Visakhapatnam (Amaravathi)	
15.	Bhubaneswar	
16.	Kolkata	Kolkata North
17.	Ranchi	
18.	Lucknow	Lucknow
19.	Meerut	
20.	Mumbai	Thane
21.	Pune	

7.2 In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.

7.3 In respect of show cause notices issued by the officers of DGGI prior to issuance of [Notification No. 02/2022-Central Tax dated 11th March, 2022](#), involving cases mentioned in para 7.1 above and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 above, by issuing corrigendum to such show cause notices.”

**15.2.2.3 Departmental Clarifications - Clarification on refund related issues- [Circular No. 59/33/2018-GST dated 4th September, 2018](#)**

Various representations have been received seeking clarification on issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as detailed hereunder:

**2. Submission of invoices for processing of claims of refund:**

2.1 It was clarified vide [Circular No. 37/11/2018-GST dated 15th March, 2018](#) that since the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that invoices are scrutinized. Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax.

2.2. In this regard, trade and industry have represented that such requirement is cumbersome and increases their compliance cost, especially where the number of invoices is large.

2.3. In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the account of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.

**15.2.2.4 Departmental Clarifications - Clarifications of issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor- [Circular No. 71/45/2018-GST dated 26th October, 2018](#)**

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

S. No.	Issue	Clarification
1	Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?	<p>1. It has been noted that while applying for registration as a casual taxable person, the <b>FORM GST REG-1</b> (S. No. 11) seeks information regarding the "<b>estimated net tax liability</b>" only and not the gross tax liability.</p> <p>2. It is accordingly clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.</p>

<p>2.</p>	<p>As per section 27 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by causal taxable person is ninety days with provision for extension of same by the proper officer for a further period not exceeding ninety days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.</p>	<p>1. It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.</p> <p>2. While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.</p> <p>3. In such cases he would not be required to pay advance tax for the purpose of registration.</p> <p>4. He can surrender such registration once the exhibition is over.</p>
<p>3.</p>	<p>Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act.</p>	<p>1. According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.</p> <p>2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using <b>FORM GST DRC-03</b>.</p> <p>3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. <b>FORM GST DRC-07</b> can be used by the tax authorities in such cases.</p> <p>4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.</p>

**15.2.2.5 Departmental Clarifications - Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange - [Circular No. 106/25/2019-GST dated 29th June, 2019](#)**



The Government vide [notification no. 11/2019-Central Tax \(Rate\)](#), [10/2019-Integrated Tax \(Rate\)](#) and [11/2019-Union territory Tax \(Rate\)](#) all dated 29.06.2019 issued in exercise of powers under section 55 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the „CGST Act“) has notified that the retail outlets established at departure area of the international airport beyond immigration counters shall be entitled to claim refund of all applicable Central tax, Integrated tax, Union territory tax and Compensation cess paid by them on inward supplies of indigenous goods received by them for the purposes of subsequent supply of goods to outgoing international tourists i.e. to a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes against foreign exchange (hereinafter referred to as the “eligible passengers”). Identical notifications have been issued by the State or Union territory Governments under the respective State Goods and Services Tax Acts (hereinafter referred to as the “SGST Act”) or Union Territory Goods and Services Tax Acts (hereinafter referred to as the “UTGST Act”) also to provide for refund of applicable State or Union territory tax.

2. With a view to ensuring expeditious processing of refund claims, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby specifies the conditions, manner and procedure for filing and processing of such refund claims in succeeding paras.

**3. Duty Free Shops and Duty Paid Shops:** -It has been recognized that international airports, house retail shops of two types - „Duty Free Shops“ (hereinafter referred to as “DFS”) which are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962 (hereinafter referred to as the “Customs Act”) and duty paid indigenous goods and „Duty Paid Shops“ (hereinafter referred to as “DPS”) retailing duty paid indigenous goods.

**4. Procurement and supply of imported / warehoused goods:** - The procedure for procurement of imported / warehoused goods is governed by the provisions contained in Customs Act. The procedure and applicable rules as specified under the Customs Act are required to be followed for procurement and supply of such goods.

**5. Procurement of indigenous goods:** - Under GST regime there is no special procedure for procurement of indigenous goods for sale by DFS or DPS. Therefore, all indigenous goods would have to be procured by DFS or DPS on payment of applicable tax when procured from the domestic market.

**6. Supply of indigenous goods by DFS or DPS established at departure area of the international airport beyond immigration counters (hereinafter referred to as “the retail outlets”) to eligible passengers:** The sale of indigenous goods procured from domestic market by retail outlets to an eligible passenger is a “supply” under GST law and is subject to levy of Integrated tax but the same has been exempted vide [notification No. 11/2019-Integrated Tax \(Rate\)](#) and [01/2019-Compensation Cess \(Rate\)](#) both dated 29.06.2019. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund as per procedure explained in succeeding paragraphs.

**7. Who is eligible for refund:**

**7.1 Registration under CGST Act:** The retail outlets applying for refund shall be registered under the provisions of section 22 of the CGST Act read with the rules made thereunder and shall have a valid GSTIN.

**7.2 Location of retail outlets:** Such retail outlets shall be established at departure area of the international airport beyond immigration counters and shall be entitled to claim a refund of all applicable Central tax, State tax, Integrated tax, Union territory tax and Compensation cess paid by them on all inward supplies of indigenous goods received for the purposes of subsequent supply of such goods to the eligible passengers.

## **8. Procedure for applying for refunds:**

**8.1. Maintenance of Records:** The records with respect to duty paid indigenous goods being brought to the retail outlets and their supplies to eligible passengers shall be maintained as per Annexure A in electronic form. The data shall be kept updated, accurate and complete at all times by such retail outlets and shall be available for inspection/verification of the proper officer of central tax at any time. The electronic records must incorporate the feature of an audit trail, which means a secure, computer generated, time stamped record that allows for reconstruction of the course of events relating to the creation, modification or deletion of an electronic record and includes actions at the record or system level, such as, attempts to access the system or delete or modify a record.

**8.2. Invoice-based refund:** It is clarified that the refund to be granted to retail outlets is not on account of the accumulated input tax credit but is refund based on the invoices of the inward supplies of indigenous goods received by them. As stated in para 6 above, the supply made by such retail outlets to eligible passengers has been exempted vide [notification No. 11/2019-Integrated Tax \(Rate\)](#) and [01/2019-Compensation Cess \(Rate\)](#) both dated 29.06.2019 and therefore such retail outlets will not be eligible for input tax credit of taxes paid on such inward supplies and the same will have to be reversed in accordance the provisions of the CGST Act read with the rules made thereunder. It is also clarified that no refund of tax paid on input services, if any, will be granted to the retail outlets.

8.3. Any supply made to an eligible passenger by the retail outlets without payment of taxes by such retail outlets shall require the following documents / declarations:

- (a) Details of the Passport (via Passport Reading Machine);
- (b) Details of the Boarding Pass (via a barcode scanning reading device);
- (c) A passenger declaration as per Annexure B;
- (d) A copy of the invoice clearly evidencing that no tax was charged from the eligible passenger by the retail outlet.

8.4. The retail outlets will be required to prominently display a notice that international tourists are eligible for purchase of goods without payment of domestic taxes.

8.5. Manual filing of refund claims: In terms of rule 95A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the „CGST Rules“) as inserted vide [notification No. 31/2019-Central Tax dated 28.06.2019](#), the retail outlets are required to apply for refund on a monthly or quarterly basis depending upon the frequency of furnishing of return in FORM GSTR-3B. Till the time the online utility for filing the refund claim is made available on the common portal, these retail outlets shall apply for refund by filing an application in FORM GST RFD-10B , as inserted vide [notification No. 31/2019-Central Tax dated 28.06.2019](#) manually to the jurisdictional proper officer. The said refund application shall be accompanied with the following documents:

- (i) An undertaking by the retail outlets stating that the indigenous goods on which refund is being claimed have been received by such retail outlets;

- (ii) An undertaking by the retail outlets stating that the indigenous goods on which refund is being claimed have been sold to eligible passengers;
- (iii) Copies of the valid return furnished in FORM GSTR – 3B by the retail outlets for the period covered in the refund claim;
- (iv) Copies of FORM GSTR-2A for the period covered in the refund claim; and
- (v) Copies of the attested hard copies of the invoices on which refund is claimed but which are not reflected in FORM GSTR-2A.

#### **9. Processing and sanction of the refund claim :**

9.1. Upon receipt of the complete application in FORM GST RFD-10B, an acknowledgement shall be issued manually by the proper officer within 15 days of the receipt of application in FORM GST RFD-02. In case of any deficiencies or any additional information is required, the same shall be communicated to the retail outlets by issuing a deficiency memo manually in FORM GST RFD-03 by the proper officer within 15 days of the receipt of the refund application. Only one deficiency memo should be issued against one refund application which is complete in all respects.

9.2. The proper officer shall validate the GSTIN details on the common portal to ascertain whether the return in FORM GSTR- 3B has been filed by the retail outlets. The proper officer may scrutinize the details contained in FORM RFD-10B, FORM GSTR-3B and FORM GSTR-2A. The proper officer may rely upon FORM GSTR-2A as an evidence of the accountal of the supply received by them in relation to which the refund has been claimed by the retail outlets. Normally, officers are advised not to call for hard copies of invoices or details contained in Annexure A. As clarified in clause (v) of Para 8.5 above, it is reiterated that the retail outlets would be required to submit hard copies of only those invoices of inward supplies that have not been reflected in FORM GSTR-2A.

9.3. The proper officer shall issue the refund order manually in FORM GST RFD-06 along with the manual payment advice in FORM GST RFD-05 for each head i.e., Central tax/State tax/Union territory tax/Integrated tax/Compensation Cess. The amount of sanctioned refund along with the bank account details of the retail outlets shall be manually submitted in the PFMS system by the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to the PAO for disbursal of the said amount.

9.4. Where any refund has been made in respect of an invoice without the tax having been paid to the Government or where the supply of such goods was not made to an eligible passenger, such amount refunded shall be recovered along with interest as per the provisions contained in the section 73 or section 74 of the CGST Act, as the case may be.

9.5. It is clarified that the retail outlets will apply for refund with the jurisdictional Central tax/State tax authority only, however, the payment of the sanctioned refund amount in relation to Central tax / Integrated tax / Compensation Cess shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax / Union Territory Tax shall be made by the State tax/Union Territory tax authority. It therefore becomes necessary that the refund order issued by the proper officer of Central Tax is duly communicated to the concerned counter-part tax authority within seven days for the purpose of disbursal of the remaining sanctioned refund amount. The procedure outlined in para 6.0 of [Circular No.24/24/2017-GST dated 21stDecember 2017](#) should be followed in this regard.

10. The scheme shall be effective from 01.07.2019 and would be applicable in respect of all supplies made to eligible passengers after the said date. In other words, retail outlets would be eligible to claim refund of taxes paid on inward supplies of indigenous goods received by them even prior to 01.07.2019 as long as all the conditions laid down in Rule 95A of the CGST Rules and this circular are fulfilled.

**15.2.2.5A Departmental Clarifications - Withdrawal of [Circular No. 106/25/2019-GST dated 29.06.2019](#)- [Circular No. 176/08/2022-GST dated 6th July, 2022](#)**

Kind attention is invited to [Circular No. 106/25/2019-GST dated 29.06.2019](#) wherein certain clarifications were given in relation to rule 95A, inserted in the Central Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

2. The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification [No. 14/2022-Central Tax, dated 05.07.2022](#). Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, ab-initio, [Circular No 106/25/2019-GST dated 29th June, 2019](#).

**15.2.2.6 Departmental Clarifications - Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-- [Circular No. 171/03/2022-GST dated 6th July, 2022](#)**

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder.

Sl. No.	Issues	Clarification

<p>1.</p>	<p>In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</p> <p>Also, whether any penal action can be taken against registered person 'A' in such cases.</p>	<p>Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.</p> <p>The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
<p>2.</p>	<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</p>
<p>3.</p>	<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and</p>	<p>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was</p>



<p>penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

**15.2.2.7 Departmental Clarifications - Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19- [Circular No. 183/15/2022-GST dated 27th December, 2022](#)**

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial



period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

Sl. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in <b>FORM GSTR-2A</b> of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in <b>FORM GSTR-2A</b> may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed <b>FORM GSTR-1</b> as well as return in <b>FORM GSTR-3B</b> for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in <b>FORM GSTR-2A</b> of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in <b>FORM GSTR-3B</b> and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
d.	Where the supplier has filed FORM GSTR-1 as well as return in <b>FORM GSTR-3B</b> for a tax period, but he has declared the supply with wrong GSTIN of the recipient in <b>FORM GSTR-1</b> .	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx> .

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018- 19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

**15.2.2.8 Departmental Clarifications - Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation- [Circular No. 185/17/2022-GST dated 27th December, 2022](#)**

Attention is invited to sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as "noticee"), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

<i>Sl. No.</i>	<i>Issue</i>	<i>Clarification</i>
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	<ul style="list-style-type: none"> <li>• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.</li> <li>• Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. <b>within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</b></li> </ul>
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	<ul style="list-style-type: none"> <li>• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with</li> </ul>

	<p>sub-section (10) of section 73 of CGST Act.</p> <ul style="list-style-type: none"><li>• Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.</li><li>• It transpires from a combined reading of these provisions that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund.</li><li>• Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice</li></ul>
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		<p>to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which <b>show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act.</b> Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only <b>where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.</b></p> <ul style="list-style-type: none"><li>• In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under sub-section (1) of section 74</li></ul>
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	<p>of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.</p> <ul style="list-style-type: none"><li>• In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.</li><li>• Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.</li></ul>
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**15.2.3.1 Instructions - Issuance of SCNS in Time Bound Manner – [Instruction No. 02/2021-22 \[GST-INV-DR\] dated 22<sup>nd</sup> September 2021](#)**

A detailed analysis to pursue trends in cases of GST evasion & fraudulent ITC availment booked viz-a-viz number of SCNs issued against for the FY 2017-18 [w.e.f. July, 2017], 2018-19 & 2019-20, have been made and it is observed that in GST evasion cases booked and in the Fraudulent ITC cases booked, during the above mentioned period, SCNs have been issued only in few cases.

2. Apparently, cases of ITC frauds or GST evasion are covered under the provisions of Section 74 of CGST Act, 2017 [the extended period clause], However, there may be certain other situations where issuance of a notice under Section 73 of the CGST Act, 2017, is intended.

2.2 Kind attention is invited to sub-section (2) & sub-section (10) of the Section 73 of the CGST Act, 2017, which read as under:

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

(10) The proper officer shall issue the order under sub-section (9) within three 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 three years from the date of erroneous refund.

2.3 Attention is also invited to sub-section (2) & sub-section (10) of the Section 74 of the CGST Act, 2017, which read as under:

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

(10) The proper officer shall issue the order under sub-section (9) within a period of five 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 five years from the date of erroneous refund.

3. Further, the last dates of filing of the "Annual Return" under Section 44 of the CGST Act, 2017, for the Financial Years 2017-18, 2018-19 & 2019-20 are as below:

S.No.	Period	Last date to file Annual Return
1.	2017-18	05th & 7h February, 2020 (Notification no. 06/2020- Central Tax) dated 03.02.2020
2	2018-19	31st December, 2020 (Notification no. 80/2020- Central Tax) dated 28. 10.2020
3.	2019-20	31s March, 2021 (Notification no. 04/2021-Central Tax) dated 28.02.2021

4. Board has examined the matter in the background of issuance of SCNs in meagre number of cases booked/detected as mentioned above. It may be seen that the last date for filing the Annual Returns for the FYs of 2017-18, 2018-19 & 2019-20 is already over. As a result, the time limit of three years/five years for issuance of orders under Section 73 & Section 74 of the CGST Act, 2017 has already kicked in. If the issuance of SCNs is pushed to close proximity of the end dates/last dates, it may leave very little time with the adjudicating authority to pass orders within stipulated period mentioned in sub-section (10) of Section 73/ Section 74. This might result in a situation where either the adjudicating authority is not able to pass orders within prescribed time period or quality of adjudication suffers. It is felt that the present situation warrants for extra efforts on the part of field formations and strict monitoring at supervisory level.

5. Accordingly, Board desires that Principal Director Generals / Director General(s)/ Principal Chief Commissioner(s)/Chief Commissioner(s) within their jurisdiction may take stock of the pending investigation cases/other cases which warrant issuance of show cause notices and take appropriate action to ensure timely completion of investigation(s) and issuance of SCNs

well before the last date. The respective Pr. Chief Commissioners/Chief Commissioner(s) may draw an action plan so that no case is pending investigation beyond one year. Needless to mention that once SCN is issued, timely adjudication must follow.

**15.2.3.1 Instructions - Deposit of tax during the course of search, inspection or investigation – [Instruction No. 01/2022-23 \[GST – Investigation\] dated 25th May, 2022](#)**

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.

2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating `recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

5. Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

### 15.3 General provisions relating to determination of tax [Section 75]

<b>Section 75(1)</b>	01.07.2017 to till date	<p><b>Period of stay to be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74</b></p> <p>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 sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.</p>
<b>Section 75(2)</b>	01.07.2017 to till date	<p><b>Deemed issuance of notice under sub-section (1) of section 73 where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 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</b></p> <p>Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 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 sub-section (1) of section 73.</p>
<b>Section 75(3)</b>	01.07.2017 to till date	<p><b>Time limit of two years to issue an order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court</b></p> <p>Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court,</p>

		such order shall be issued within two years from the date of communication of the said direction.
<b>Section 75(4)</b>	01.07.2017 to till date	<p><b>Grant of an opportunity of hearing 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.</b></p> <p>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.</p>
<b>Section 75(5)</b>	01.07.2017 to till date	<p><b>Adjournment of hearing if sufficient cause is shown by the person chargeable with tax</b></p> <p>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:</p>
<b>First Proviso</b>	01.07.2017 to till date	<p><b>Adjournment of hearing not more than three times to a person</b></p> <p><b>Provided that</b> no such adjournment shall be granted for more than three times to a person during the proceedings.</p>
<b>Section 75(6)</b>	01.07.2017 to till date	<p><b>Relevant facts and the basis of the decision to be set out in the order</b></p> <p>The proper officer, in his order, shall set out the relevant facts and the basis of his decision.</p>
<b>Section 75(7)</b>	01.07.2017 to till date	<p><b>No demand in the order to exceed the amount specified in the notice and no demand to be confirmed on the grounds other than the grounds specified in the notice.</b></p> <p>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.</p>
<b>Section 75(8)</b>	01.07.2017 to till date	<p><b>The amount of interest and penalty to be modified taking into account the amount of tax modified by the Appellate Authority or Appellate Tribunal or court</b></p> <p>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.</p>
<b>Section 75(9)</b>	01.07.2017 to till date	<p><b>Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability</b></p> <p>The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.</p>

<p><b>Section 75(10)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Deemed conclusion of the adjudication proceedings if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.</b></p> <p>The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.</p>
<p><b>Section 75(11)</b></p>	<p>01.07.2017 to till date</p>	<p><b>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 sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.</b></p> <p>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 sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.</p>
<p><b>Section 75(12)</b></p>	<p>01.07.2017 to 31.12.2021</p>	<p><b>Recovery of unpaid self-assessed tax, either wholly or partly, or any amount of interest payable on such tax</b></p> <p>Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.</p>
	<p>01.01.2022 to till date</p>	<p><b>Recovery of unpaid self-assessed tax, either wholly or partly, or any amount of interest payable on such tax</b></p> <p>Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.</p> <p><sup>1</sup><b>[Explanation.—</b>For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in</p>



		respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.]
		<b>Notes</b> 1. Inserted w.e.f. 1st day of January, 2022 the Explanation vide <b>Section 114 of the <a href="#">Finance Act, 2021(NO. 13 OF 2020)</a> which has come into force on 1<sup>st</sup> January 2022 vide <a href="#">Notification No. 39/2021 – Central Tax dated 21st December, 2021</a>.</b>
<b>Section 75(13)</b>	01.07.2017 to till date	<p><b>Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.</b></p> <p>Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.</p>

**15.3.1.1 Departmental Notifications – The central tax officer and the officers subordinate to him to exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act.**

[Notification No. 79/2018 – Central Tax dated 31st December, 2018](#) - The Board has amended [Notification No. 2/2017-Central Tax dated 19th June, 2017](#), namely:-

In the said notification, in paragraph 3, the following shall be inserted, namely :-

“Notwithstanding anything contained in this notification, the central tax officer specified in column (3) of Table I and the officers subordinate to him shall exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act throughout the territorial jurisdiction of the corresponding central tax officer specified in column (2) of the said Table in respect of those cases as may be assigned by the Board”.

**15.3.2.1 Departmental Clarifications - Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation- [Circular No. 185/17/2022-GST dated 27th December, 2022](#)**

Attention is invited to sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

<i>Sl. No.</i>	<i>Issue</i>	<i>Clarification</i>
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	<ul style="list-style-type: none"> <li>• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.</li> <li>• Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. <b>within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</b></li> </ul>
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	<ul style="list-style-type: none"> <li>• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with</li> </ul>

		<p>sub-section (10) of section 73 of CGST Act.</p> <ul style="list-style-type: none"><li>• Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.</li><li>• It transpires from a combined reading of these provisions that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund.</li><li>• Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice</li></ul>
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		<p>to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which <b>show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act.</b> Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only <b>where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.</b></p> <ul style="list-style-type: none"><li>• In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under sub-section (1) of section 74</li></ul>
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		<p>of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.</p> <ul style="list-style-type: none"> <li>• In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.</li> <li>• Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.</li> </ul>
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**15.3.3.1 Instructions - Guidelines for recovery proceedings under the provisions of section 79 of the CGST Act, 2017 in cases covered under explanation to sub-section (12) of section 75 of the CGST Act, 2017 - [Instruction No. 01/2022-GST dated 7th January, 2022.](#)**

Sub-section (12) of section 75 of the CGST Act, 2017 (hereinafter referred to as "the Act") provides that notwithstanding anything contained in section 73 or section 74 of the Act, where any amount of self-assessed tax in accordance with the return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79. An explanation has

been added to subsection (12) of section 75 vide section 114 of the Finance Act, 2021 with effect from 01.01.2022 to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37. but not included in the return furnished under section 39.

2. Doubts are being raised by the trade and the field formations regarding modalities for initiation of the recovery proceedings under section 79 of the Act in the cases covered under the explanation to sub-section (12) of section 75 of the Act. In view of the above, the following guidelines are hereby issued with respect to the recovery proceedings under section 79 of the Act in such cases.

3.1 Sub-section (12) of section 75 of the Act is reproduced hereunder for reference:

"(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation. - For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39. "

From the perusal of the above provision, it is clear that where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-I, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability. and the interest thereon, are liable to be recovered under the provisions of section 79.

3.2 There may, however, be some cases where there may be a genuine reason for difference between the details of outward supplies declared in GSTR-1 and those declared in GSTR-3B. For example, the person may have made a typographical error or may have wrongly reported any detail in GSTR-I or GSTR-3B. Such errors or omissions can be rectified by the said person in a subsequent GSTR-I/ GSTR-3B as per the provisions of sub-section (3) of section 37 or the provisions of sub-section (9) of section 39, as the case may be. There may also be cases, where a supply could not be declared by the registered person in GSTR-I of an earlier tax period, though the tax on the same was paid by correctly reporting the said supply in GSTR-3B. The details of such supply may now be reported by the registered person in the GSTR-I of the current tax period. In such cases, there could be a mis-match between GSTR-I and GSTR-3B (liability reported in GSTR-I > tax paid in GSTR-3B) in the current tax period. Therefore, in all such cases, an opportunity needs to be provided to the concerned registered person to explain the differences between GSTR-I and GSTR-3B, if any, and for short payment or non-payment of the amount of self-assessed tax liability, and interest thereon, before any action under section 79 of the Act is taken for recovery of the said amount.

3.3 Accordingly, where ever any such amount of tax, self-assessed by the registered person in his outward supply statement GSTR-I is found to be short paid or not paid by the said person through his GSTR-3B return in terms of the provisions of sub-section (12) of section 75 of the Act, the proper officer may send a communication (with DIN, in terms of guidelines issued vide circular No. 12214112019-GST dated 5th November 2019) to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication. If, the concerned person is able to justify the differences between GSTR-I and GSTR-3B, or



is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays the amount such short paid or not paid, then there may not be any requirement to initiate proceedings for recovery under section 79.

3.4 However, if the said registered person either fails to reply to the proper officer, or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer, then the proceedings for recovery of the said amount as per provisions of section 79 may be initiated by the proper officer. Further, where the said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the proper officer, then the proper officer may proceed for recovery of the said amount as per provisions of section 79.

#### 15.4 Tax collected but not paid to Government [Section 76]

<p><b>Section 76(1)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Every person who has collected the tax under GST 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.</b></p> <p>Notwithstanding anything to the 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, 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.</p>
<p><b>Section 76(2)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Serving of show cause as to why the amount as specified in the notice, should not be paid to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed, where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid.</b></p> <p>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 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.</p>
<p><b>Section 76(3)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Determination of the amount due under sub-section (2) and the payment of the amount so determined.</b></p> <p>The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.</p>

<p><b>Section 76(4)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Liability to pay interest on the amount referred to in sub-section (1) or sub-section (3)</b></p> <p>The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) 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.</p>
<p><b>Section 76(5)</b></p>	<p>01.07.2017 to till date</p>	<p><b>An opportunity of being heard to be granted where a request is received in writing from the person to whom the notice was issued.</b></p> <p>An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.</p>
<p><b>Section 76(6)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Time limit of one year from the date of issue of the notice, to issue an order</b></p> <p>The proper officer shall issue an order within one year from the date of issue of the notice.</p>
<p><b>Section 76(7)</b></p>	<p>01.07.2017 to till date</p>	<p><b>The period of stay by an order of the court or Appellate Tribunal shall be excluded in computing the period of one year.</b></p> <p>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.</p>
<p><b>Section 76(8)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Proper officer to set out the relevant facts and the basis of his decision.</b></p> <p>The proper officer, in his order, shall set out the relevant facts and the basis of his decision.</p>
<p><b>76(9)</b></p>	<p>01.07.2017 to till date</p>	<p><b>The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).</b></p> <p>The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).</p>
<p><b>Section 76(10)</b></p>	<p>01.07.2017 to till date</p>	<p><b>Surplus left shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.</b></p> <p>Where any surplus is left after the adjustment under sub-section (9), 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.</p>

<b>Section 76(11)</b>	01.07.2017 to till date	<p><b>The person who has borne the incidence of the amount, may apply for the refund in accordance with the provisions of section 54.</b></p> <p>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.</p>
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**15.4.1.1 Departmental Notifications – The central tax officer and the officers subordinate to him to exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act.**

[Notification No. 79/2018 – Central Tax dated 31st December, 2018](#) - The Board has amended [Notification No. 2/2017-Central Tax dated 19th June, 2017](#), namely:-

In the said notification, in paragraph 3, the following shall be inserted, namely :-

“Notwithstanding anything contained in this notification, the central tax officer specified in column (3) of Table I and the officers subordinate to him shall exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act throughout the territorial jurisdiction of the corresponding central tax officer specified in column (2) of the said Table in respect of those cases as may be assigned by the Board”.

**15.4.2.1 Departmental Clarifications - Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017 - [Circular No. 3/3/2017-GST, dated 5th July, 2017](#)**

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, has issued [Circular No. 3/3/2017-GST, dated 5th July, 2017](#) to assign the officers mentioned in Column (2) of the Table below, the functions other than Registration and Composition as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:-

**Table**

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)

1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub- section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint  Commissioner of Central Tax	i. Sub- sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65 vi. Sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of Section 74 vii. Sub-sections (2), (3), (6) and (8) of Section 76 viii. Sub-section (1) of Section 79 ix. Section 123 x. Section 127 xi. Sub-section (3) of Section 129 xii. Sub- sections (6) and (7) of Section 130 xiii. Sub- section (1) of Section 142 xiv. Sub-rule (2) of Rule 82 xv. Sub-rule (4) of Rule 86 xvi. Explanation to Rule 86

		<p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rule (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p> <p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	i. Sub- section (6) of Section 35

		<ul style="list-style-type: none"> <li>ii. Sub-sections (1) and (3) of Section 61</li> <li>iii. Sub-section (1) of Section 62</li> <li>iv. Sub-section (7) of Section 65</li> <li>v. Sub-section (6) of Section 66</li> <li>vi. Sub-section (11) of Section 67</li> <li>vii. Sub-section (1) of Section 70</li> <li>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</li> <li>ix. Sub-rule (6) of Rule 56</li> <li>x. Sub-rules (1), (2) and (3) of Rule 99</li> <li>xi. Sub-rule (1) of Rule 132</li> <li>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</li> <li>xiii. Rule 150</li> </ul>
5.	Inspector of Central Tax	<ul style="list-style-type: none"> <li>i. Sub-section (3) of Section 68</li> <li>ii. Sub- rule (17) of Rule 56</li> <li>iii. Sub- rule (5) of Rule 58</li> </ul>

**15.4.2.2 Departmental Clarifications - Clarification on refund related issues- [Circular No. 59/33/2018-GST dated 4th September, 2018](#)**

Various representations have been received seeking clarification on issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as detailed hereunder:

**2. Submission of invoices for processing of claims of refund:**

2.1 It was clarified vide [Circular No. 37/11/2018-GST dated 15th March, 2018](#) that since the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that invoices are scrutinized. Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input tax credit where goods or services are exported without payment of integrated tax.



2.2. In this regard, trade and industry have represented that such requirement is cumbersome and increases their compliance cost, especially where the number of invoices is large.

2.3. In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the account of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.

**15.5 Tax wrongfully collected and paid to Central Government or State Government.**  
**[Section 77]**

<b>Section 77(1)</b>	01.07.2017 to till date	<p><b>Refund of tax wrongly paid on supplies</b></p> <p>A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.</p>
<b>Section 77(2)</b>	01.07.2017 to till date	<p><b>No requirement to pay interest on tax wrongly paid on supplies.</b></p> <p>A registered person who has paid integrated tax on a transaction considered by him to be an 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 or, as the case may be, the Central tax and the Union territory tax payable.</p>

**15.5.1.1 Departmental Clarifications - Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act -- [Circular No. 162/18/2021-GST dated 25th September, 2021](#)**

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field

formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an 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 or, as the case may be, the Central tax and the Union territory tax payable.”

Section 19 of the IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government---  
---(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”

3. Interpretation of the term “subsequently held”

3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017

4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as

inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") vide [notification No. 35/2021-Central Tax dated 24.09.2021](#). The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of [notification No.35/2021-Central Tax dated 24.09.2021](#), the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

4.3 Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations.

A taxpayer "A" has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

Sl.No.	Scenario	Last date for filing the refund claim
1	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10-5-2021.	Since "A" has paid the tax in the correct head before issuance of <a href="#">Notification No. 35/2021-Central Tax, dated 24-9-2021</a> , the last date for filing refund application in <b>FORM GST RFD-01</b> would be 23-9-23 (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10-11-2021 i.e. after issuance of <a href="#">Notification No. 35/2021-Central Tax dated 24-9-2021</a>	Since "A" has paid the correct tax on 10-11-2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in <b>FORM GST RFD-01</b> would be 9-11-2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

3	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10-5-2019	Since "A" has paid the tax in the correct head before issuance of <a href="#">Notification No. 35/2021-Central Tax, dated 24-9-2021</a> , the last date for filing refund application in <b>FORM GST RFD-01</b> would be 23-9-23 (two years from date of notification)
4	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10-11-2022 <i>i.e.</i> after issuance of <a href="#">Notification No. 35/2021-Central Tax dated 24-9-2021</a>	Since "A" has paid the correct tax on 10-11-2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in <b>FORM GST RFD-01</b> would be 9-11-2024 (two years from the date of payment of tax under the correct head, <i>i.e.</i> integrated tax)

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of [notification No.35/2021-Central Tax, dated 24.09.2021](#), would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

4.4 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

#### 15.6 Initiation of recovery proceedings [Section 78]

<b>Section 78</b>	01.07.2017 to till date	<b>Recovery proceedings to be initiated on failure to pay the amount payable within a period of three months from the date of service of the order under this act.</b>  Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:
<b>First Proviso</b>	01.07.2017 to till date	<b>The proper officer may require the taxable person to make the payment within such period less than a period of three months if he considers it expedient in the interest of revenue.</b>  <b>Provided that</b> where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

**15.6.1.1 Departmental Clarifications - Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017 - [Circular No. 3/3/2017-GST, dated 5th July, 2017](#)**

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, has issued [Circular No. 3/3/2017-GST, dated 5th July, 2017](#) to assign the officers mentioned in Column (2) of the Table below, the functions other than Registration and Composition as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:-

**Table**

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub- section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub- sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65

		<p>vi. Sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of Section 74</p> <p>vii. Sub-sections (2), (3), (6) and (8) of Section 76</p> <p>viii. Sub-section (1) of Section 79</p> <p>ix. Section 123</p> <p>x. Section 127</p> <p>xi. Sub-section (3) of Section 129</p> <p>xii. Sub- sections (6) and (7) of Section 130</p> <p>xiii. Sub- section (1) of Section 142</p> <p>xiv. Sub-rule (2) of Rule 82</p> <p>xv. Sub-rule (4) of Rule 86</p> <p>xvi. Explanation to Rule 86</p> <p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rule (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p>
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		<p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	<p>i. Sub- section (6) of Section 35</p> <p>ii. Sub-sections (1) and (3) of Section 61</p> <p>iii. Sub-section (1) of Section 62</p> <p>iv. Sub-section (7) of Section 65</p> <p>v. Sub-section (6) of Section 66</p> <p>vi. Sub-section (11) of Section 67</p> <p>vii. Sub-section (1) of Section 70</p> <p>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</p> <p>ix. Sub-rule (6) of Rule 56</p> <p>x. Sub-rules (1), (2) and (3) of Rule 99</p> <p>xi. Sub-rule (1) of Rule 132</p> <p>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</p> <p>xiii. Rule 150</p>
5.	Inspector of Central Tax	<p>i. Sub-section (3) of Section 68</p> <p>ii. Sub- rule (17) of Rule 56</p>

		iii. Sub- rule (5) of Rule 58
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**15.7 Recovery of tax [Section 79]**

<b>Section 79(1)</b>	01.07.2017 to till date	<b>Modes of recovery of tax payable to the government</b>	
		Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—	
		(a)	<p><b>The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person</b></p> <p>the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;</p>
		(b)	<p><b>The proper officer may recover or may require any other specified officer to recover the amount payable by detaining and selling any goods belonging to such person.</b></p> <p>the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;</p>
		(c)	<p>(i) <b>The proper officer may require any 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 Government.</b></p> <p>the proper officer may, by a notice in writing, require any 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 Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the</p>

				amount due from such person or the whole of the money when it is equal to or less than that amount;
			(ii)	<p><b>Every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice</b></p> <p>every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;</p>
			(iii)	<p><b>Deemed defaulter, in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment to the Government.</b></p> <p>in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;</p>
			(iv)	<p><b>The officer may amend or revoke the notice or extend the time for making any payment in pursuance of the notice</b></p> <p>the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;</p>
			(v)	<p><b>Deemed discharge of the liability of the person in default</b></p> <p>any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in</p>

				<p>default to the extent of the amount specified in the receipt;</p>
			(vi)	<p><b>The person who has been served notice under sub-clause (i), shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.</b></p> <p>any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;</p>
			(vii)	<p><b>No requirement to pay to the government where a person on whom a notice is served under sub-clause (i) proves that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person.</b></p> <p>where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;</p>
			(d)	<p><b>The proper officer may distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid.</b></p> <p>the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or</p>

		<p>immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;</p>
		<p>(e) <b>The proper officer may prepare a certificate and send it to the Collector of the district to recover from such person the amount specified thereunder as if it were an arrear of land revenue</b></p> <p>the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;</p>
		<p>(f) <b>The proper officer may file an application to the appropriate Magistrate to recover from such person the amount specified thereunder as if it were a fine imposed by him.</b></p> <p>Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.</p>
<b>Section 79(2)</b>	01.07.2017 to till date	<p><b>The amount may be recovered from any bond or other instrument executed under this Act</b></p> <p>Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.</p>
<b>Section 79(3)</b>	01.07.2017 to till date	<p><b>The proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an</b></p>

		<p><b>arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.</b></p> <p>Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.</p>
<b>Section 79(4)</b>	01.07.2017 to till date	<p><b>Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.</b></p> <p>Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.</p>
<b><sup>1</sup>[Explanation</b>	01.02.2019 to till date	<p>For the purposes of this section, the word person shall include “<b>distinct persons</b>” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.]</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;"><b>Notes</b></p> <p>1    Inserted w.e.f. 01.02.2019 vide Section 24 of the <a href="#">Central Goods and Services Tax (Amendment) Act, 2018</a> which comes into force vide <a href="#">Notification No. 02/2019 – Central Tax dated 29th January, 2019</a></p> </div>

**15.7.1.1 Departmental Clarifications - Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances — [Circular No. 41/15/2018-GST dated 13th April, 2018](#)**

Sub-section (1) of section 68 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount shall carry with him the documents and devices prescribed in this behalf. Sub-section (2) of the said section states that the details of documents required to be carried by the person in charge of the conveyance shall be validated in such manner as may be prescribed. Sub-section (3) of the said section provides that where any conveyance referred to in sub-section (1) of the said section is intercepted by the proper officer at any place, he may require the person in charge of the conveyance to produce the documents for verification, and the said person shall be liable to produce the documents and also allow the inspection of goods.



1.1 Rules 138 to 138D of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") lay down, in detail, the provisions relating to e-way bills. As per the said provisions, in case of transportation of goods by road, an e-way bill is required to be generated before the commencement of movement of the consignment. Rule 138A of the CGST rules prescribes that the person in charge of a conveyance shall carry the invoice or bill of supply or delivery challan, as the case may be; and in case of transportation of goods by road, he shall also carry a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

1.2 Section 129 of the CGST Act provides for detention, seizure and release of goods and conveyances in transit while section 130 of the CGST Act provides for the confiscation of goods or conveyances and imposition of penalty.

2. In this regard, various references have been received regarding the procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances. In order to ensure uniformity in the implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under section 168 (1) of the CGST Act, hereby issues the following instructions:

(a) The jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order.

(b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).

(c) For the purposes of verification of the e-way bill, interception and inspection of the conveyance and/or goods, the proper officer under rule 138B of the CGST Rules shall be the officer who has been assigned the functions under sub-section (3) of section 68 of the CGST Act vide [Circular No. 3/3/2017 – GST, dated 05.07.2017](#).

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or

through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

(f) On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection.

(g) Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.

(h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in FORM GST MOV-05. Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(i) Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.

(j) Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05. The order in FORM GST MOV09 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(k) In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV10, proposing confiscation of the goods and conveyance and imposition of penalty.

(l) Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in FORM GST MOV-10. In the said notice, the quantum of tax and penalty leviable under section 130 of the CGST Act read with section 122 of the CGST Act, and the fine in lieu of confiscation leviable under sub-section (2) of section 130 of the CGST Act shall be specified. Where the conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice under the third proviso to sub-section (2) of section 130 of the CGST Act, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance.

(m) No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.

(n) An order of confiscation of goods shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding three months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released. The order in FORM GST MOV-11 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act. Once an order of confiscation of goods is passed in FORM GST MOV-11, the order in FORM GST MOV-09 passed earlier with respect to the said goods shall be withdrawn.

(o) An order of confiscation of conveyance shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the conveyance and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such conveyance shall stand transferred to the Central Government. In the order passed above, a suitable time not exceeding three months shall be offered to make the payment of penalty and fines imposed in lieu of confiscation and get the conveyance released. The order in FORM GST MOV-11 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(p) The order referred to in clauses (n) and (o) above may be passed as a common order in the said FORM GST MOV-11.

(q) In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified in FORM GST MOV11, the proper officer shall

at auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government.

(r) Suitable modifications in the time allowed for the service of notice or order for auction or disposal shall be done in case of perishable and/or hazardous goods.

(s) Whenever an order or proceedings under the CGST Act is passed by the proper officer, a corresponding order or proceedings shall be passed by him under the respective State or Union Territory GST Act and if applicable, under the Goods and Services Tax (Compensation to States) Act, 2017. Further, sub-sections (3) and (4) of section 79 of the CGST Act/respective State GST Acts may be referred to in case of recovery of arrears of central tax/State tax/Union territory tax.

(t) The procedure narrated above shall be applicable mutatis mutandis for an order or proceeding under the IGST Act, 2017.

(u) Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.

(v) A summary of every order in FORM GST MOV-09 and FORM GST MOV-11 shall be uploaded electronically in FORM GST-DRC-07 on the common portal.

3. The format of [FORMS GST MOV-01 to GST MOV-11](#) are annexed to this Circular.

**15.7.1.1A Departmental Clarifications - Changes in Circulars issued earlier under the CGST Act, 2017- [Circular No. 88/07/2019-GST dated 1st February, 2019](#)**

The CGST (Amendment) Act, 2018, SGST Amendment Acts of the respective States, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and the GST (Compensation to States) (Amendment) Act, 2018 (hereafter referred to as the GST Amendment Acts) have been brought in force with effect from 01.02.2019.

2. Consequent to the GST Amendment Acts, the following circulars issued earlier under the CGST Act, 2017 are hereby amended with effect from 01.02.2019, to the extent detailed in the succeeding paragraphs.

**[5 Circular No. 41/15/2018 dated 13.04.2018](#)**

This circular is revised in view of the amendment carried out in section 129 of the CGST Act, 2017 vide section 27 of the CGST (Amendment) Act, 2018 allowing 14 days for owner/transporter to pay tax/penalty for seized goods. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

**5.1 Original Para 2(k)**

In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in FORM GST MOV-06, the action under section 130 of the CGST

Act shall be initiated by serving a notice in FORM GST MOV-10, proposing confiscation of the goods and conveyance and imposition of penalty.

### **5.2 Amended Para 2(k)**

In case the proposed tax and penalty are not paid within fourteen days from the date of the issue of the order of detention in FORM GST MOV-06, the action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV-10, proposing confiscation of the goods and conveyance and imposition of penalty.

5.3 Further, FORM GST MOV-08 and FORM GST MOV-09, annexed to the circular are revised as below:

### **FORM GST MOV-08 (para 4)**

And if all taxes, interest, penalty, fine and other lawful charges demanded by the proper officer are duly paid within fourteen days of the date of detention being made in writing by the said proper officer, this obligation shall be void.

### **FORM GST MOV-09 (para 10)**

You are hereby directed to make the payment forthwith/not later than fourteen days from the date of the issue of the order of detention in FORM GST MOV-06, failing which action under section 130 of the Central/State Goods and Services Tax Act /section 21 of the Union Territory Goods and Services Tax Act or section 20 of the Integrated Goods and Services Act shall be initiated

**15.7.1.2 Departmental Clarifications - Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-- [Circular No. 42/16/2018-GST dated 13th April, 2018](#)**

Kind attention is invited to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) relating to the recovery of arrears of central excise duty /service tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

2. The issues have been examined and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

### **3. Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law (Central Excise Act, 1944 and Chapter V of the Finance Act, 1994)**

i) **Recovery of arrears of wrongly availed CENVAT Credit:** In case where any proceeding of appeal, review or reference relating to a claim for CENVAT credit had been initiated,



whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(6)(b) of the CGST Act refers].

ii) **Recovery of CENVAT Credit carried forward wrongly:** CENVAT credit of central excise duty/service tax availed under the existing law may be carried forward in terms of transitional provisions as per section 140 of the CGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of section 140 of the CGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under section 79 of the CGST Act.

iii) **Recovery of arrears of central excise duty and service tax:** a. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(8)(a) of the CGST Act refers]. b. If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(7)(a) of the CGST Act refers].

iv) **Recovery of arrears due to revision of return under the existing law:** Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(9)(a) of the CGST Act refers].

4. In view of the above legal provisions, recovery of central excise duty/ service tax and CENVAT credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit, is required to be made as an arrear of tax under the CGST Act. The following procedure is hereby prescribed for the recovery of arrears:

#### **4.1 Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:**

(a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

#### **4.2 Recovery of interest, penalty and late fee payable:**

(a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount



available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

**4.3 Payment of central excise duty & service tax on account of returns filed for the past period:** The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto [www.aces.gov.in](http://www.aces.gov.in) and make payment relating to the same through EASIEST portal ([cbec-easiest.gov.in](http://cbec-easiest.gov.in)), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on [www.aces.gov.in](http://www.aces.gov.in) but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

**4.4 Recovery of arrears from assesseees under the existing law in cases where such assesseees are not registered under the CGST Act, 2017:** Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

## 15.8 Payment of tax and other amount in instalments [Section 80]

<p><b>Section 80</b></p>	<p>01.07.2017 to till date</p>	<p><b>The Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50.</b></p> <p>On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:</p>
<p><b>First Proviso</b></p>	<p>01.07.2017 to till date</p>	<p><b>The whole outstanding balance shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery, where there is default in payment of any one instalment on its due date.</b></p> <p><b>Provided that</b> where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.</p>

## 15.9 Transfer of property to be void in certain cases [Section 81]

<b>Section 81</b>	01.07.2017 to till date	<p><b>Any charge created on or transfer of the property belonging or in possession by way of sale, mortgage, exchange, or any other mode of transfer in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void.</b></p> <p>Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:</p>
<b>First Proviso</b>	01.07.2017 to till date	<p><b>The charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.</b></p> <p><b>Provided that,</b> such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.</p>

### 15.9.1.1 Departmental Clarifications - Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017 - [Circular No. 3/3/2017-GST, dated 5th July, 2017](#)

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, has issued [Circular No. 3/3/2017-GST, dated 5th July, 2017](#) to assign the officers mentioned in Column (2) of the Table below, the functions other than Registration and Composition as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:-

#### Table

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub- section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub- sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65 vi. Sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of Section 74 vii. Sub-sections (2), (3), (6) and (8) of Section 76 viii. Sub-section (1) of Section 79 ix. Section 123 x. Section 127 xi. Sub-section (3) of Section 129 xii. Sub- sections (6) and (7) of Section 130 xiii. Sub- section (1) of Section 142 xiv. Sub-rule (2) of Rule 82

		<p>xv. Sub-rule (4) of Rule 86</p> <p>xvi. Explanation to Rule 86</p> <p>xvii. Sub-rule (11) of Rule 87</p> <p>xviii. Explanation 2 to Rule 87</p> <p>xix. Sub-rules (2) and (3) of Rule 90</p> <p>xx. Sub-rules (2) and (3) of Rule 91</p> <p>xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92</p> <p>xxii. Explanation to Rule 93</p> <p>xxiii. Rule 94</p> <p>xxiv. Sub-rule (6) of Rule 96</p> <p>xxv. Sub-rule (2) of Rule 97</p> <p>xxvi. Sub-rule (2), (3), (4), (5) and (7) of Rule 98</p> <p>xxvii. Sub-rule (2) of Rule 100</p> <p>xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101</p> <p>xxix. Rule 143</p> <p>xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144</p> <p>xxxi. Sub-rules (1) and (2) of Rule 145</p> <p>xxxii. Rule 146</p> <p>xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147</p> <p>xxxiv. Sub-rules(1),(2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p>
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		xxxviii. Rule 156
4.	Superintendent of Central Tax	<ul style="list-style-type: none"> <li>i. Sub- section (6) of Section 35</li> <li>ii. Sub-sections (1) and (3) of Section 61</li> <li>iii. Sub-section (1) of Section 62</li> <li>iv. Sub-section (7) of Section 65</li> <li>v. Sub-section (6) of Section 66</li> <li>vi. Sub-section (11) of Section 67</li> <li>vii. Sub-section (1) of Section 70</li> <li>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</li> <li>ix. Sub-rule (6) of Rule 56</li> <li>x. Sub-rules (1), (2) and (3) of Rule 99</li> <li>xi. Sub-rule (1) of Rule 132</li> <li>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</li> <li>xiii. Rule 150</li> </ul>
5.	Inspector of Central Tax	<ul style="list-style-type: none"> <li>i. Sub-section (3) of Section 68</li> <li>ii. Sub- rule (17) of Rule 56</li> <li>iii. Sub- rule (5) of Rule 58</li> </ul>

#### 15.10 Tax to be first charge on property [Section 82]

<b>Section 82</b>	01.07.2017 to till date	<p><b>Any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.</b></p> <p>Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.</p>
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#### 15.11 Provisional attachment to protect revenue in certain cases [Section 83]

<b>Section 83(1)</b>	01.07.2017 to 31.12.2021	<p><b>Provisional attachment of any property, including bank account for the purpose of protecting the interest of the Government revenue</b></p> <p>(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.</p>
	01.01.2022	<p><b>Provisional attachment of any property, including bank account for the purpose of protecting the interest of the Government revenue</b></p> <p><sup>1</sup>[(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.]</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;">NOTES</p> <p>1. Substituted Sub-section (1) w.e.f. 1st day of January, 2022 vide Section 115 of the <a href="#">Finance Act, 2021 (NO. 13 OF 2020)</a> which has come into force on 1<sup>st</sup> January 2022 vide <a href="#">Notification No. 39/2021 – Central Tax dated 21st December, 2021</a>.</p> </div>
<b>Section 83(2)</b>	01.07.2017 to till date	<p><b>Provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)</b></p> <p>Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).</p>

**15.11.1.1 – Instructions - Guidelines for provisional attachment of property under section 83 of the CGST Act, 2017 – [Instruction No. CBEC-20/16/05/2021-GST/359 dated 23rd February-2021](#)**

## 15.12 Continuation and validation of certain recovery proceedings [Section 84]

<b>Section 84</b>	01.07.2017 to till date	<p><b>Continuation and validation of certain recovery proceedings</b></p> <p>Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as “Government dues”), is served upon any</p>
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		<p>taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—</p>										
		<table border="1"> <tr> <td style="vertical-align: top;">(a)</td> <td> <p><b>Where the Government dues are enhanced in any appeal, revision or other proceedings</b></p> <p>where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;</p> </td> </tr> <tr> <td style="vertical-align: top;">(b)</td> <td> <p><b>Where the Government dues are reduced in any appeal, revision or other proceedings</b></p> <p>where such Government dues are reduced in such appeal, revision or in other proceedings—</p> <table border="1"> <tr> <td style="vertical-align: top;">(i)</td> <td>it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;</td> </tr> <tr> <td style="vertical-align: top;">(ii)</td> <td>the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;</td> </tr> <tr> <td style="vertical-align: top;">(iii)</td> <td>any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.</td> </tr> </table> </td> </tr> </table>	(a)	<p><b>Where the Government dues are enhanced in any appeal, revision or other proceedings</b></p> <p>where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;</p>	(b)	<p><b>Where the Government dues are reduced in any appeal, revision or other proceedings</b></p> <p>where such Government dues are reduced in such appeal, revision or in other proceedings—</p> <table border="1"> <tr> <td style="vertical-align: top;">(i)</td> <td>it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;</td> </tr> <tr> <td style="vertical-align: top;">(ii)</td> <td>the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;</td> </tr> <tr> <td style="vertical-align: top;">(iii)</td> <td>any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.</td> </tr> </table>	(i)	it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;	(ii)	the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;	(iii)	any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.
(a)	<p><b>Where the Government dues are enhanced in any appeal, revision or other proceedings</b></p> <p>where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;</p>											
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**15.12.1.1 Departmental Clarifications - Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016- [Circular No. 187/19/2022-GST dated 27th December, 2022](#)**

Attention is invited to [Circular No.134/04/2020-GST dated 23rd March, 2020](#), wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as ‘operational debt’ and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows.

4.1 Section 84 of CGST Act reads as follows:

"Section 84 - Continuation and validation of certain recovery proceedings.-

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then- ..

(b) where such Government dues are reduced in such appeal, revision or in other proceedings-

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated (iii) on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal."

4.2 As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of CGST Act.

5. Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84 of CGST Act.

Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.