



DEMAND & RECOVERY

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01: Definition & General Questions

Q.1 Define Adjudicating Authority. Also give some example.

Answer:

- As per the definition given under CGST Act, "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under CGST Act, but does not include:-
 - the Central Board of Indirect Taxes and Customs,
 - the Revisional Authority,
 - the Authority for Advance Ruling,
 - the Appellate Authority for Advance Ruling,
 - the Appellate Authority
 - the authority in section 171(2)
 - the Appellate Tribunal and
- Principal Commissioners, Commissioners, Additional Commissioners, Joint Commissioners, Deputy Commissioners, Assistant Commissioners of Central Tax etc. are adjudicating authorities.

02: Sec 74A:- Tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason pertaining to F.Y. 2024-25 onward

Q.2 Enlist the circumstances for which a show cause notice can be issued by the proper officer u/s 74A. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer u/s 74A.

Answer:

- As per **section 74A** of CGST Act, a show cause notice can be issued by the proper officer, if it appears to him that:-
 - tax has not been paid or
 - tax has been short paid or
 - tax has been erroneously refunded or
 - input tax credit has been wrongly availed or utilized,whether or not for any reason of fraud or wilful misstatement or suppression of facts to evade tax.
- As per **section 74A(2)**, such notice shall be issued **within 42 months (i.e. 3 years & 6 months)**
 - from the due date for furnishing of annual return for the financial year to which such amount relates to or
 - from the date of erroneous refund.
- As per **section 74A(7)**, proper officer shall issue order u/s 74A(6) **within 12 months** from date of issue of notice u/s 74A(2). This period can be further extended by maximum 6 months, subject to authorisation & for reasons of delay to be recorded in writing.
- As per **section 44**, the due date of filing annual return for a financial year is **31st December** following the end of such financial year.

Q.3 Answer the following questions:-

1. Rajul has been issued a show cause notice (SCN) (for reasons other than fraud) on 31.12.2029 u/s 74A(1) of CGST Act, 2017 on account of short payment of tax during the period between 01.07.2024 and 31.12.2024. He has been given an opportunity of personal hearing on 15.01.2030. Advise Rajul as to what should be the written submissions in the reply to the show cause notice issued to him.
2. If in above question, the SCN is issued on 31.01.2029 and Rajul is given an opportunity of personal hearing on 15.02.2029, based on which she contends that the show cause notice issued to her is time-barred in law. You are required to examine the technical veracity of the contention of Rajul.



Answer :-

1.	<p>The written submissions in reply to SCN issued to Rajul are as follows:-</p> <p>(i) The show cause notice (SCN) issued for normal period of limitation u/s 74A(1) of CGST Act, 2017 is not sustainable.</p> <p>(ii) As per section 74A(2), such notice shall be issued within 42 months (i.e. 3 years & 6 months) from the due date for furnishing of annual return for the financial year to which such amount relates to. As per section 44, the due date of filing annual return for a financial year is 31st December following the end of such financial year.</p> <p>(iii) The SCN has been issued for the period between 01.07.2024 to 31.12.2024 which falls in the financial year (FY) 2024-25. The due date for furnishing annual return for FY 2024-25 is 31.12.2025. Thus, the SCN u/s 74A(1) ought to have been issued latest by 30.06.2029.</p> <p>(iv) Since the notice has been issued after 30.06.2029, the entire proceeding is barred by limitation and deemed to be concluded u/s 75(10).</p>
2.	<p>The contention of Rajul is not valid in law as the SCN u/s 74A(1) ought to have been issued latest by 30.06.29. Since in given case, the notice has been issued on 31.01.2029, notice is not time-barred.</p>

Q.4 KK Pvt. Ltd. self-assessed its CGST liability as ₹ 1,15,000 for the month of May 20XX but failed to make the payment.

Subsequently the Department initiated penal proceedings against KK Pvt. Ltd. for recovery of penalty u/s 74A for failure to pay GST and issued show cause notice on 12th September 20XX, which was received by KK Pvt. Ltd. on 17th September 20XX.

KK Pvt. Ltd. deposited the tax along with interest on 27th September 20XX and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 57,500 (i.e. 50% of ₹ 1,15,000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.

Answer: Legal Provision:-

- As per **section 74A(11)** of CGST Act, 2017, if self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty u/s 74A(5)(i) equivalent to 10% of tax due or ₹10,000, **whichever is higher**, is payable.
- Thus, **option u/s 74A(8)(ii) to pay tax within 60 days** of issuance of show cause notice to avoid penalty is **not** available in case of self-assessed tax.

Discussion & Conclusion:-

- The due date for payment of tax for the month of May 20XX is 20.06.20XX.
- Since in given case, KK Pvt. Ltd. has not paid the self-assessed tax within 30 days of due date [i.e., 20.06.20XX], **penalty equivalent to the higher** of the following is payable by him:-
 - ₹ 11,500 which is 10% of tax ₹ 1,15,000 or
 - ₹ 10,000.
- Thus, the penalty payable is **₹ 11,500 each under CGST & SGST**.
- Hence, the **stand taken** by the Department that penalty will be levied on KK Pvt. Ltd. is correct, but the amount of **penalty ₹ 57,500 is not correct**.

Author's note:- With the introduction of Section 74A under GST, matters involving interpretational disputes are now governed by this new section from F.Y. 24-25, making Sections 73 & 74 inapplicable in such cases. Circular No. 76/50/2018, which applied to Section 73, cannot be extended to Section 74A. Hence, only Section 74A will apply until CBIC issues further clarification.



Q.5 Inoba Bhav is engaged in supply of taxable services. He supplies some services in the month of April and collects IGST of Rs. 15,50,000 on said supply on 18th April. However, he fails to pay the tax so collected within 30 days from the due date of payment of such tax.

No Show Cause Notice (SCN) has been issued to him so far. Inoba Bhav decides to discharge his tax liability, before the SCN is issued to him. He is of the view that no penalty is leviable if the payment of tax is made before issue of SCN. Therefore, he self-assesses his tax liability at Rs. 15,50,000 and pays the same on 26th June. Determine the interest and penalty, if any, payable by Inoba Bhav.

Answer :- Legal Provisions:-

- As per **section 74A(11) of CGST Act, 2017**, if self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of such tax, then penalty **u/s 74A(5)(i)** equivalent to 10% of tax due or ₹ 10,000, whichever is higher, is payable.
- Thus, option **u/s 74A(8)(i)** to pay tax before issuance of show cause notice to avoid penalty is **not available** in such cases.

Discussion & Conclusion:-

- The due date for payment of tax collected on 18th April is 20th May.
- However, since tax is actually paid on 26th June, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [i.e. from 21st May to 26th June=37 days] as per section 50 of CGST Act, 2017 read with rule 88B of CGST Rules as under:-
Interest payable = ₹ 15,50,000 × 18% p.a. × 37/365 = ₹ 28,282 (rounded off).
- **Penalty is mandatorily payable by Inoba Bhav u/s 74A(11) read with section 74A(5)(i) which is equivalent to the higher of the following:-**
 - ₹ 1,55,000 which is 10% of tax ₹ 15,50,000 or
 - ₹ 10,000.
- Therefore, the penalty of ₹ 1,55,000 & interest of ₹ 28,282 (as calculated in case 1 above) will have to be paid by Inoba Bhav.

Q.6 Discuss briefly the procedure for issue of adjudication order u/s 74A(6) & u/s 74A(9)(iii) to person chargeable with tax by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.

Answer : The procedure for issue of adjudication order under section 74A of CGST Act, 2017 is as under:-

- 1) If a show cause notice/statement is issued to a person chargeable with tax, **he may furnish a representation** to the proper officer in his defence, if he is of the view that he is not so liable to pay whole/part of the amount mentioned in the show cause notice.
- 2) As per **section 74A(6)**, after considering the representation made by such person, PO shall determine tax, interest & penalty due from such person & issue an order.
- 3) As per **section 74A(9)(iii)**, if person chargeable with tax by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax pays the tax along with interest payable thereon u/s 50 and a penalty equivalent to 50% of such tax **within 60 days of communication of the order, all proceedings** in respect of the said notice shall be deemed to be **concluded**.

Q.7 Discuss the amount of tax and penalty to be paid, if any, in the following independent cases where show cause notices are issued under section 74A of the CGST Act, 2017.

S.No	Date on which credit was taken wrongly	Amount of ITC taken wrongly (₹ in lakh)	Present status
1	31st January, 20XX	200	Adjudication order passed on 26th July, 20ZZ demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.

2	30th June, 20XX	250	Adjudication order passed on 26th August, 20ZZ demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
3	30th October, 20XX	120	Show cause notice has been issued on 5th September, 20ZZ demanding the entire amount of credit with interest and proposing penalty equal to 100% of the credit taken.
4	30th January, 20YY	50	Statement of the Managing Director has been recorded on 6th September, 20ZZ wherein he has admitted the non-receipt of the inputs and availing the credit wrongly.

Note: In all the cases, assessee wants to pay the amount on 20-10-20ZZ.

Answer :

S. No	Date on which credit was taken wrongly	Amount of ITC wrongly taken (₹ in lakh)	Tax & penalty u/s 74A(9)
1	31st January, 20XX	200	Adjudication order is passed on 26th July, 20ZZ & payment is made on 20.10.20ZZ i.e., after 60 days of the communication of the adjudication order. Therefore, entire amount of ITC wrongly availed which is ₹ 200 lakh & equal amount of penalty i.e., ₹ 200 lakh shall be payable.
2	30th June, 20XX	250	Adjudication order is passed on 26th August, 20ZZ and payment is made on 20.10.20ZZ i.e., within 60 days of the communication of the adjudication order. Therefore, entire amount of ITC wrongly availed which is ₹ 250 lakh and 50% of the penalty imposed i.e., ₹ 125 lakh shall be payable.
3	30th October, 20XX	120	Show cause notice is issued on 5th September 20ZZ and payment is made on 20.10.20ZZ i.e., within 60 days of issue of show cause notice. Therefore, entire amount of ITC wrongly availed which is ₹ 120 lakh and 25% of the penalty imposed i.e., ₹ 30 lakh shall be payable.
4	30th January, 20YY	50	Alternative-I: It is assumed that payment has been made within 60 days of issue of show cause notice. Entire amount of ITC wrongly availed which is ₹ 50 lakh and 25% of the penalty imposed i.e., ₹ 12.5 lakh shall be payable. Alternative-II: It is assumed that show cause notice has not yet been issued. Payment made on 20.10.20ZZ is before issuance of show cause notice. Therefore, amount of ITC admitted to be taken wrongfully which is ₹ 50 lakh and penalty equal to 15% of such ITC i.e., ₹ 7.5 lakh shall be payable.

Q.8 A taxpayer has suppressed certain facts resulting in short payment of tax. The mistake is pointed out by the Department, but no-show cause notice (SCN) has been issued. As per the taxpayer, suppression is accepted at ₹ 12,00,000 and he agrees that the suppression has taken place in the month of January, 20XX. He clears the dues on 20th April, 20XX.

However, the Department, on verification, identifies additional suppression of ₹ 2,00,000 in the same month of January, 20XX. SCN is issued and the taxpayer represents before the proper officer, which results into an adverse order against the taxpayer. The order is passed on 25.05.20XX and the taxpayer complies with the adverse adjudication order on 27.07.20XX.

Determine the tax, interest and penalty payable at each stage. [CA Final Nov 19 Exam]

Answer:-

- As per **explanation 2 to section 74A** of CGST Act, 2017, suppression means 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 GST law, or failure to furnish any information on being asked for, in writing, by the proper officer.
- The given question can be answered **on the basis of 2 assumptions** i.e. the suppression accepted at ₹ 12 lakh may be assumed to be either the value or the tax amount.

Alternative 1:- ₹ 12 lakh is assumed to be the value of suppression and tax rate is assumed to be 18%. (Note-1)

Tax, interest and penalty payable before the issue of the SCN:-

In case of short payment of tax by reason of suppression of facts, if taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Value suppressed = ₹ 12,00,000

Tax @ 18% = ₹ 2,16,000

Interest (Assumption 1) = ₹ 2,16,000 × 18% × 90/365 = ₹ 9,587 (rounded off)

[From 21st January to 20th April] **(Note-2)** or

Interest (Assumption 2) = ₹ 2,16,000 × 18% × 59/365 = ₹ 6,285 (rounded off)

[From 21st February to 20th April] **(Note-3)**

Penalty = ₹ 2,16,000 × 15% = ₹ 32,400

Tax, interest and penalty payable after the adjudication order:-

In case of short payment of tax by reason of suppression of facts, if taxpayer pays short-paid tax & applicable interest after 60 days of communication of adjudication order, penalty equal to 100% of such tax is payable.

Value suppressed = ₹ 2,00,000

Tax @ 18% = ₹ 36,000

Interest (Assumption 1) = ₹ 36,000 × 18% × 188/365 = ₹ 3,338 (rounded off)

[From 21st January to 27th July] **(Note-2)** or

Interest (Assumption 2) = ₹ 36,000 × 18% × 157/365 = ₹ 2,787 (rounded off)

[From 21st February to 27th July] **(Note-3)**

Penalty = ₹ 36,000 × 100% = ₹ 36,000

Alternative 2:- ₹ 12 lakh is assumed to be the suppressed amount of tax.

Tax, interest and penalty payable before the issue of the SCN:-

In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Tax payable = ₹ 12,00,000

Interest (Assumption 1) = ₹ 12,00,000 × 18% × 90/365 = ₹ 53,260 (rounded off)

[From 21st January to 20th April] **(Note-2)** or

Interest (Assumption 2) = ₹ 12,00,000 × 18% × 59/365 = ₹ 34,915 (rounded off)

[From 21st February to 20th April] (**Note-3**)

Penalty = ₹ 12,00,000 × 15% = ₹ 1,80,000

Tax, interest and penalty payable after the adjudication order:-

In case of short payment of tax by reason of suppression of facts, if taxpayer pays such short-paid tax and applicable interest after 60 days of communication of adjudication order, penalty equal to 100% of such tax is payable.

Tax payable = ₹ 2,00,000

Interest (Assumption 1) = ₹ 2,00,000 × 18% × 188/365 = ₹ 18,542 (rounded off)

[From 21st January to 27th July] (**Note-2**) or

Interest (Assumption 2) = ₹ 2,00,000 × 18% × 157/365 = ₹ 15,485 (rounded off)

[From 21st February to 27th July] (**Note-3**)

Penalty = ₹ 2,00,000 × 100% = ₹ 2,00,000

Notes:-

- 1) Any other tax rate may also be assumed. Answer will change accordingly.
- 2) It has been assumed that the information has been suppressed in the return/statement/report filed in January and thus, interest would become payable from 21st January in this case.
- 3) It has been assumed that suppression activity took place in January but reported in the return/ statement/ report filed in February and thus, interest is payable from 21st February in this case.

Q.9 Arnab Enterprises, a registered supplier located in Madhya Pradesh, has duly filed its monthly GST returns for the financial year 2024–25. During the scrutiny of its returns for the said financial year in August 2025, the proper officer noticed an inadvertent short payment of CGST and SGST totalling ₹ 4,60,000 in the month of October 2024, on account of a Bonafide error. Before issuance of the show cause notice by the proper officer, Arnab Enterprises paid the tax of ₹ 1,00,000 (₹ 50,000 CGST and ₹ 50,000 SGST) on the basis of its own ascertainment along with applicable interest and with penalty, if any, on 15th September 2025 and informed the proper officer in writing of such payment.

Based on the facts above, answer the following:

1. Ascertain the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnab Enterprises.
2. Determine the amount of penalty, if any, payable on the payment of tax of ₹ 1,00,000 by Arnab Enterprises on the basis of its own ascertainment along with applicable interest on 15th September 2025.
3. Assuming that the proper officer decides to issue a show cause notice under section 74A on 10th October 2025, determine the maximum amount of tax for which he can issue the show cause notice. Ascertain the last date by which the proper officer should issue order under section 74A assuming that show cause notice is issued by proper officer on said date.
4. In continuation of sub-part (3) above, if proper officer issues a show cause notice under section 74A on 10th October 2025 for the amount of tax so allowed and Arnab Enterprises decides to pay said tax along with applicable interest, on 5th December 2025, you are required to determine penalty, if any, payable by Arnab Enterprises.

In each of the above cases, will your answer be different if the short payment of tax is on account of fraud, other facts remain the same?

Note : Assume that the due date for furnishing annual return has not been extended and limitation period for issuance of order under section 74A has not been extended by the Commissioner. Ignore computation of interest in the above question. [CA Final RTP Sep 25]



Answer :

1)	<ul style="list-style-type: none"> ➤ The proper officer can issue a show cause notice within 42 months from the due date of furnishing the annual return for the relevant financial year to which short payment relates to [Section 74A(2)]. ➤ For the financial year 2024–25, the due date for furnishing the annual return is 31st December 2025. Therefore, the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises is 30th June 2029. ➤ Further, section 74A stipulates the same limitation period for issuance of show cause notice whether the short payment is on account of fraud or on account of a Bonafide error. ➤ Thus, the answer will remain same if the short payment of tax is on account of fraud.
2)	<ul style="list-style-type: none"> ➤ The person chargeable with tax where any tax has been short paid, may, <ul style="list-style-type: none"> ➤ before service of show cause notice, ➤ pay the amount of tax along with interest payable u/s 50 of such tax ➤ on the basis of his own ascertainment of such tax and ➤ inform the proper officer in writing of such payment, and ➤ the proper officer, on receipt of such information shall not serve any show cause notice in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(8)(i)]. ➤ Thus, no penalty is payable by Arnav Enterprises in respect of payment of tax of ₹ 1,00,000 before issuance of show cause notice. No show cause notice will be issued by proper officer for tax of ₹1,00,000 so paid. ➤ However, in case where the short payment of tax is on account of fraud, the person chargeable with tax, may <ul style="list-style-type: none"> ➤ before service of show cause notice, ➤ pay the amount of tax along with interest payable u/s 50 and a penalty equivalent to 15% of such tax ➤ on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and ➤ inform the proper officer in writing of such payment, and ➤ the proper officer, on receipt of such information, shall not serve any show cause notice, in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder. [Section 74A(9)(i)]. ➤ Thus, a penalty of ₹ 15,000 [₹ 1,00,000 × 15%] is payable by Arnav Enterprises along with payment of tax of ₹ 1,00,000 with applicable interest, before issuance of show cause notice. No show cause notice will be served by the proper officer after payment of tax along with interest and penalty, in respect of the tax so paid.
3)	<ul style="list-style-type: none"> ➤ Since Arnav Enterprises has paid the tax of ₹ 1,00,000 alongwith interest before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(8)(i)]. ➤ However, where the proper officer is of the opinion that the amount paid under section 74A(8)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)]. ➤ Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000]. ➤ In case where the short payment is on account of fraud, answer will be as follows: <ul style="list-style-type: none"> - Since Arnav Enterprises has paid the tax of ₹ 1,00,000 along with applicable interest and penalty before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(9)(i)].

	<ul style="list-style-type: none"> - However, where the proper officer is of the opinion that the amount paid under section 74A(9)(I) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)]. - Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000]. ➤ Further, the proper officer is required to issue the order within 12 months from the date of the issuance of show cause notice, in both fraud and non-fraud cases [Section 74A(7)]. ➤ Thus, in the given case, the proper officer has to issue the order on or before 10th October 2026, whether the short payment is on account of fraud or on account of a Bonafide error.
4)	<ul style="list-style-type: none"> ➤ Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable u/s 50 within 60 days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(8)(ii)]. ➤ Thus, in given case, since Arnav Enterprises has paid the tax of ₹ 3,60,000 along with applicable interest within 60 days of issuance of show cause notice, i.e. on or before 9th December 2025, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. ➤ In case where the short payment is on account of fraud, the answer will be as follows: <ul style="list-style-type: none"> ➤ Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 60 days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(9)(ii)]. ➤ Thus, in the given case, Arnav Enterprises has to pay penalty of ₹ 90,000 [₹ 3,60,000 × 25%]. If Arnav Enterprises has paid the tax of ₹ 3,60,000 along with applicable interest and penalty of ₹ 90,000 [₹ 3,60,000 × 25%] on 5th December 2025, which is within 60 days of issuance of show cause notice, i.e. on or before 9th December 2025, all proceedings in respect of the said notice shall be deemed to be concluded.

Q.10 Discuss the validity of the following independent cases under the provisions of CGST Act, 2017:-

(i) CGST officer had issued a notice u/s 74A(1) involving suppression of facts to evade tax against which appeal was preferred by the Assessee. Appellate Authority concluded that the penalty u/s 74A(5)(ii) is not sustainable for the reason that the suppression of facts to evade tax has not been established. Now the officer wishes to determine the penalty u/s 74A(5)(i).

Is the action of the officer valid?

What would be the time period for re-determination of the tax, interest and penalty payable by the noticee u/s 74A(1) in such cases?

(ii) CGST officer issued an adjudication order which did not specify payment of interest on the tax short paid by the registered person. So, the assessee contends that interest cannot be demanded as the said order is silent on the same. Is the contention of the assessee correct? [CA Final Jul 21 Exam]

(iii) CGST officer issued an adjudication order which specified the payment of interest ₹60,000 on the tax short paid ₹3,50,000 by the registered person, but the show cause notice specified the payment of interest ₹50,000 on the tax short paid ₹3,50,000. The registered person contends that he is not liable to pay interest in excess of the amount of interest specified in notice. Is the contention valid? [CA Final Jul 21 Exam]

Answer:-

(i)	Valid. <ul style="list-style-type: none">➤ As per section 75(2A) of CGST Act, 2017, if the Appellate Authority concludes that the penalty u/s 74A(5)(ii) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, u/s 74A(5)(i).➤ As per section 75(3) of CGST Act, proper officer is required to issue order of redetermination of tax, interest & penalty payable within the time limit as specified in u/s 75(3), i.e. within 2 years from the date of communication of said direction by appellate authority.
(ii)	Incorrect. As per section 75 of CGST Act, 2017, the interest on the tax short paid or not paid shall be payable whether or not the same is specified in the order determining the tax liability.
(iii)	Valid. As per section 75 of CGST Act, 2017, the interest demanded in the order shall not exceed the amount specified in the notice.

Q.11 A show cause notice was issued demanding GST of ₹ 1,80,180 for the month of July, 20XX on 1st October, 20XX. However, adjudicating authority after the personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for ₹ 10,80,180. Assessee seeks your advice. What would be your advice, if assessee comes to you:-

(a) after issue of order or

(b) a corrigendum revising the amount to ₹ 10,80,180 on 15th November, 20XX, is issued. [CA Final Nov. 18 Exam]

Answer :

(a) **Advice after issue of orders:-**

- As per **section 75(7)** of CGST Act 2017, the amount of tax, interest and penalty demanded in the order **cannot exceed the amount specified in the notice.**
- In given case, the tax demanded in order exceeds the tax demanded in show cause notice and hence, **assessee can file an appeal** against the adjudication order within the prescribed time limit.

(b) **Advice after issue of corrigendum:-**

- As per **section 161** of CGST Act 2017, any authority, who has issued any notice, may rectify any error which is apparent on the face of record in such notice on its own motion **within 6 months** from the date of issue of such notice **except** where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.
- In given case, since corrigendum has been issued to rectify a typographical error in the show cause notice, which is an error apparent on the face of the record, **the rectification is correct in law.**
- Further, being rectification of a clerical error, the **time limit of 6 months will not apply.**
- Therefore, assessee should **reply to the show cause notice considering the revised amount of demand.**

Author's Note :- Refer section 161 in Miscellaneous Provisions chapter

Q.12 Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyer's worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76. [Study Mat]

Answer :

- As per **section 76** of CGST Act, 2017, it is mandatory for to pay amount collected from other person representing tax under this Act, to the Government.
- As per **section 76**, every person who has collected from any other person any amount as representing the tax under GST and has not paid the said amount to the Government, shall pay the said amount to the Government irrespective of whether the supplies in respect of which such amount was collected are taxable or not.
- For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.
- After considering the representation (if any) made by the person on whom show cause notice (SCN) is served, the proper officer shall determine the amount due from him and such person shall pay the amount so determined.
- In addition to paying the amount determined by the proper officer, the said person shall also be liable to **pay interest thereon under section 50** which shall be payable from the date of collection of such amount by him to the date of payment of the same to the Government

Q.13 Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions. [Study Mat] [CA Final MTP Oct 23]

Answer :

- As per **section 76** of CGST Act, 2017, **it is mandatory for Subharti Enterprises to pay amount collected** from other person representing tax under this Act, to the Government.
- As per **section 76**, every person who has collected from any other person any amount as representing the tax under GST and has not paid the said amount to the Government, **shall pay** the said amount to the Government **irrespective of whether the supplies in respect of which such amount was collected are taxable or not.**
- If any amount is required to be paid to Government as above but has not been paid, **proper officer may serve a notice on the person liable** to pay such amount requiring him to show cause as to:-
 - why the amount specified in notice should not be paid by him to the Government and
 - why a penalty equal to the amount specified in the notice should not be imposed on him.
- After considering the representation (if any) made by the person on whom show cause notice (SCN) is served, the proper officer shall determine the amount due from him and such person shall pay the amount so determined.
- In addition to paying the amount determined by the proper officer, the said person shall also be **liable to pay interest thereon under section 50** which shall be payable from the date of collection of such amount by him to the date of payment of the same to the Government.
- The proper officer shall issue an **order within 1 year [excluding the period of stay order]** from the date of issue of the notice.
- The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

04: Sec 77- Tax wrongfully collected and paid to Central and state Government

Q.14 Narmada Enterprises, a registered person, pays CGST and SGST on a transaction considered by it to be an intra-State supply. However, subsequently said transaction is held to be an inter-State supply. Examine the recourse available with Narmada Enterprises. [CA Final RTP Nov 2020]

Answer:-

Legal Provision:-

- As per **section 77(1)** of CGST Act, 2017, a registered person who has paid the Central tax and State tax/ 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**.
- Further, as per **section 19(2)** of IGST Act, 2017, a registered person who has paid central tax and State tax or 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 not be required to pay any interest** on the integrated tax payable.

Discussion & Conclusion:-

- In the given case, **Narmada Enterprises shall be refunded** the amount of taxes so paid and it shall **not be required to pay any interest on the amount of IGST payable** by it on the transaction wrongly considered by it earlier as intra-State transaction.
- The IGST liability **cannot be adjusted** against the CGST and SGST wrongly paid.

05: Sec 78 - Initiation of recovery proceeding

Q.15 In the month of March, 20XX, during the course of Departmental GST audit under section 65 of the CGST Act, 2017 of Always Right Private Limited, audit team observed that input tax credit claimed by the company was blocked under section 17(5) of the CGST Act, 2017. Audit memo was given to the company for submission of reply on the audit observations mentioned in the memo. Company submitted its reply contending that the said credit was not blocked under section 17(5) and had been rightly claimed. Department was not satisfied with the reply submitted by the company. Audit team served a show cause notice under section 74A of the CGST Act, 2017 and transferred the matter to adjudicating officer and also started recovery process under sections 78 and 79 of the CGST Act, 2017 for recovery of the input tax credit wrongly availed.

You are required to comment whether the action of the Department to recover the amount is justified with the reference to the legal provisions of the GST law. [CA Final Dec 21 Exam]

Answer : The action of the Department to initiate the recovery proceedings without adjudication order being passed is **not valid**.

Legal Provisions:-

- As per **section 78** of CGST Act, recovery proceedings can be initiated under GST law **if a taxable person fails to pay any amount payable in pursuance of an order passed** under this law **within 3 months** (or reduced period by proper officer) from the date of service of such order.

Discussion & Conclusion:-

- In given case, the recovery proceedings have been initiated only after serving the show cause notice and transferring the matter to the adjudicating officer.
- Thus, the **adjudication order has not yet been passed** in the given case.
- Hence, the **action of the Department is invalid**.

06: Sec 79- Mode of Recovery of tax

Q.16 Briefly discuss the modes of recovery of tax available to the proper officer [Study mat] [CA Final MTP Oct 24]

Answer : The proper officer may recover the dues in following manner:

- Deduction of dues from the amount owed by the tax authorities payable to such person.
- Recovery by way of detaining and selling any goods belonging to such person.
- Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government.
- Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
- Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
- By enforcing the bond/instrument executed under GST Act or any rules or regulations made thereunder.
- CGST arrears can be recovered as an arrear of SGST and vice versa.

07: Sec 80 - Payment of tax and other amount in installment

Q.17 Describe the provision of payment of tax and other amount in instalment under section 80 of the CGST Act, 2017.

Also discuss, under what circumstances such payment facility shall not be allowed. [CA Final Nov 24 Exam]

Answer :

- On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, allow payment of tax and other amounts due by such person in **maximum 24 monthly instalments**, on payment of interest and subject to prescribed conditions and limitations.
- If there is default in payment of any one instalment on due date, then the whole outstanding balance shall become due and payable immediately.
- The facility of payment in instalments **shall not be allowed** where:
 - The taxable person has already defaulted on the payment of any amount under the GST law, for which the recovery process is on.
 - the taxable person has not been allowed to make payment in instalments in the preceding financial year.
 - the amount for which instalment facility is sought is less than ₹ 25,000.
 - the amount payable is self-assessed tax.

08: Sec 81 - Transfer of property to be void in certain cases

Q.18 Mr. Arihant is engaged in supply of taxable goods and is registered in the State of Orissa. A demand notice under GST law of ₹ 50 lakh is served on him on 5th April. On 10th April, despite having knowledge of said notice, Mr. Arihant transferred his ancestral property located in Punjab in the name of his wife Soma for a consideration of ₹ 2 lakh without taking any permission from the authorities under GST. The value for the purpose of stamp duty valuation was ₹ 80 lakh. Subsequently, he filed a reply to said demand notice on 15th April stating that he would not be able to pay the amount of tax demanded in the notice due to his distressed financial situation.

Determine the validity of the act of transferring of property by Mr. Arihant to his wife Soma, under the provisions of the GST law. [CA Final RTP May 22] [CA Final MTP April 23, May 25]



Answer:- Legal Provision:-

- As per **section 81** of CGST Act, 2017, after any amount has become due from a person, if such person creates a charge on or parts with any of the property belonging to him or in his 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,
 - then such **charge or transfer shall be void** as against any claim for any tax or any other sum payable by the said person.
- However, 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 GST or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Discussion & Conclusion:-

- In given case, **transfer** of property by Mr. Arihant to his wife Soma is **void**.
- The property will still be considered in the hands of Mr. Arihant under GST law for the purpose of recovery of dues under GST from him.

09: Sec 83 - Provisional attachment to protect revenue in certain cases

Q.19 Answer the following questions:-

1. Under which proceedings, the property (including the bank account) of a taxable person can be provisionally attached by the Commissioner?
2. What shall be the validity of the provisional attachment of property?

Answer :

1. If after the initiation of any proceeding under,

- Chapter XII (Assessment),
- Chapter XIV (Inspection, Search, Seizure and Arrest),
- Chapter XV (Demands and Recovery),

the Commissioner is of the opinion that for the purpose of protecting the interest of Government revenue it is necessary to do so, **he may provisionally attach any property including bank account** belonging to the taxable person or any person specified in section 122(1A) by an order in writing in prescribed manner.

2. Every provisional attachment shall remain valid for the entire period:-

- **starting from** the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV
- **till** the expiry of 1 year from the date of order made thereunder.

Q.20 Under what circumstances the property of a taxable person provisionally attached be released?

Answer : The provisionally attached property of a taxable person can be released **under following circumstances:-**

- a) If the property attached is of perishable or hazardous nature, then such property can be released by an order, **on the payment** of an amount equivalent to the **lower** of the following along with the proof of such payment:-
 - market price of such property or
 - the amount that is or may become payable the taxable person.
- b) Any person whose property is attached may file an objection to the effect that the **property attached was or is not liable to attachment**. After giving an opportunity of being heard to the person filing the objection, the Commissioner may release the said property by an order.
- c) If the Commissioner is satisfied that the property **was or is no longer liable for attachment**, then he may release such property by issuing an order.

Q.21 Answer the following questions:-

- 1. State the consequences if the government dues, in respect of which any demand notice is already issued, are enhanced in an appeal, revision or other proceedings?**
- 2. What will be your answer for above question, if such Government dues are reduced in such appeal, revision or other proceedings?**

Answer :

1. If the government dues are enhanced in an appeal, revision or other proceedings,

- the Commissioner **shall serve another notice** of demand for the **enhanced amount** upon the taxable person or any other person **and**
- In respect of the **dues already covered** by the notice of demand served before the disposal of such appeal, revision or other proceedings, the **recovery proceedings may be continued** from the stage at which such proceedings stood immediately before such disposal without the service of any fresh notice of demand.

2. If the government dues are reduced in an appeal, revision or other proceedings,

- it shall not be necessary for Commissioner to serve a fresh notice of demand upon taxable person.
- Commissioner shall give **intimation of such reduction** to him and to the appropriate authority with whom recovery proceedings is pending.
- Any **recovery proceedings initiated** on the basis of demand served upon him prior to the disposal of such appeal, revision or other proceedings **may be continued for the reduced amount** from the stage at which such proceedings stood immediately before such disposal.