

Demand & Recovery

CCP 18.02.02.00

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.

CCP 18.02.03.00

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. Advice 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 :-

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| 1. | <p>The written submissions in reply to SCN issued to Rajul are as follows:-</p> <ul style="list-style-type: none">(i) The show cause notice (SCN) issued for normal period of limitation u/s 74A(1) of CGST Act, 2017 is not sustainable.(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. |
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	<p>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>

CCP 18.02.06.00

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 and 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.

Inoba Bhave 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 Bhave 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 Bhave.

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 Bhave 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 Bhave.

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**.

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 74 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 20-09-20ZZ.

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 and 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 and 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.
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CCP 18.03.12.00

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.

Arnav 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, Arnav 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 Arnav Enterprises.
2. Determine the amount of penalty, if any, payable on the payment of tax of ₹ 1,00,000 by Arnav 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 Arnav Enterprises decides to pay said tax along with applicable interest, on 5th December 2025, you are required to determine penalty, if any, payable by Arnav 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)	<p>➤ 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)].</p> <p>➤ 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.</p> <p>➤ 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.</p> <p>➤ Thus, the answer will remain same if the short payment of tax is on account of fraud.</p>
2)	<p>➤ The person chargeable with tax where any tax has been short paid, may,</p> <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

	<ul style="list-style-type: none"> ➤ 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)(1)]. ➤ 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 [$₹ 1,00,000 \times 15\%$] 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)(1) 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)]. - However, where the proper officer is of the opinion that the amount paid under section 74A(9)(1) 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)	<p>➤ 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)].</p> <p>➤ 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.</p> <p>➤ In case where the short payment is on account of fraud, the answer will be as follows:</p> <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.
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Sec 75- General provisions relating to determination of tax

CCP 18.05.15.00

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.

- 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.

CCP 18.08.20.00

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**.

Appeal & Revision

CCP 22.01.01.01

Miss Meena is aggrieved by the order passed by the Assistant Commissioner and wants to file an appeal with Commissioner (Appeals). Her accountant, who looked after her GST related matters including filing of GST returns / other compliances online, is on leave for one month. So, she decides to file the appeal manually.

The order against which appeal is to be filed is available on the GST portal. There was no such notification issued by the commissioner that appeal can be filed manually.

With reference to the provisions of GST law, you are required to ascertain:-

- (i) Whether Miss Meena can file an appeal to the commissioner (Appeals) in this case?
- (ii) Whether decision taken by Miss Meena to manually file an appeal is valid?

Also explain the relevant legal provisions in support of your answer. [CA Final Nov 24 Exam]

Answer:-

i)	<ul style="list-style-type: none">➤ An appeal may be filed to the Commissioner (Appeals) against an adjudicating order if such an order is passed by the Additional or Joint Commissioner.➤ However, where the order is passed by the Assistant Commissioner, the appeal is to be filed to any officer not below the rank of Joint Commissioner (Appeals).➤ Thus, in the given case, appeal cannot be filed to the Commissioner (Appeals), but to any officer not below the rank of Joint Commissioner (Appeals).
ii)	<p>An appeal to the Appellate Authority may be filed manually only if-</p> <ul style="list-style-type: none">(i) the Commissioner has so notified, or(ii) the decision or order to be appealed against is not available on the common portal. <p>Therefore, in light of the facts of the given case, the appeal cannot be filed manually.</p>

CCP 22.01.04.00

On scrutiny of returns filed by Chandan & Co., the Department found some discrepancy in ITC claimed by the company and consequently a Departmental audit was conducted under section 65 of the CGST Act. On conclusion of the audit in February, the Department issued a Show Cause Notice (SCN) alleging that the company had wrongly and deliberately claimed ITC in the returns without actual receipt of goods for the month of January. The Joint Commissioner of Central Tax, not being satisfied by the reply given by the company to the SCN, passed a written order on 28th April which was received by the company on 1st May. The order confirmed the tax demand of ₹ 30,00,000 (i.e., CGST ₹15,00,000 and SGST ₹15,00,000) and imposed a penalty of equal amount under section 74A.

Aggrieved by the order, Chandan & Co. decides to contest the order of adjudication in its entirety. It seeks advice on the following issues -

- (i) To whom should it make an appeal? Can it directly approach the High Court?
 - (ii) What is the time limit for filing the appeal in the given case?
 - (iii) Is there any requirement of pre-deposit of any amount and if so, what would be the amount?
- Provide your legal and reasoned advice to Chandan & Co. [CA Final May 22 Exam]



Answer:-

i)	<ul style="list-style-type: none"> ➔ An appeal against the order passed by Joint Commissioner lies before the Appellate Authority - Commissioner (Appeals). ➔ Chandan & Co. cannot directly approach the High Court. ➔ It needs to first file an appeal to Appellate Authority and then to Appellate Tribunal. ➔ However, a writ petition can be filed directly before the High Court for relief.
ii)	<ul style="list-style-type: none"> ➔ The time-limit for filing an appeal in the given case is 3 months from the date of communication of the order appealed against, i.e., 3 months from 1st May. ➔ Hence, the appeal must be filed on or before 1st August.
iii)	<ul style="list-style-type: none"> ➔ No appeal can be filed before the Appellate Authority unless appellant Chandan & Co. has paid pre-deposit of ₹3,00,000 which is computed as sum of the following:- <ul style="list-style-type: none"> a) Full amount of tax, interest & penalty arising from the order as admitted by him (i.e. Nil) & b) 10% of the remaining tax in dispute (₹ 30,00,000) arising from the order, i.e. ₹ 3,00,000, subject to maximum ₹40 Crores.

CCP 22.05.12

In an appeal filed with the High Court by Prateek Ltd., on the question whether activity undertaken by Prateek Ltd. amounts to supply, the appeal was decided in favour of Prateek Ltd. The amount of tax, interest and penalty involved were IGST of ₹1.2 crore, interest of ₹ 60 lakh and penalty of ₹ 50 lakh.

However, the Department does not agree with the order passed by the High Court and contends that the said activity amounts to supply under GST. The Department wants to file an appeal before the Supreme Court relating to the dispute pertaining to the demand of tax, interest and penalty. You are required to examine whether an appeal can be filed by the Department in the given case. Will your answer change, in case matter is related to valuation of services instead of determining whether the said activity amounts to supply? [CA Final RTP May 25]

Answer :

- ➔ As per **Section 120** of the CGST Act, 2017, the Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.
- ➔ **CBIC** has fixed the following monetary limits for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:

Appellate forum	Monetary limit (Amount involved in ₹)
GSTAT	20 Lakhs
High Court	1 Crore
Supreme Court	2 Crores

- ➔ Further, where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal, viz. ₹ 1.2 crore (amount of tax only) in the given case.
- ➔ **Thus, appeal cannot be filed by the Department to Supreme Court in the given case as the amount involved as per the circular does not exceed the monetary limit of ₹2 crore.**



- However, the Circular further provides that the monetary limits specified above for filing appeal or application by the Department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:
- (i) Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India or
 - (ii) Where any rules or regulations made under the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act or
 - (iii) Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the rules made thereunder or
 - (iv) Where the matter is related to –
 - a) valuation of goods or services or
 - b) classification of goods or services or
 - c) refunds or
 - d) place of supply or
 - e) any other issue,
 which is recurring in nature and/or involves interpretation of the provisions of the GST law/ the Rules/ notification/ circular/ order/ instruction etc. or
 - (v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers or
 - (vi) Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.
- In view of the above, if in the given case the matter is related to valuation of services, appeal can be filed by the Department to the Supreme Court based on the merits irrespective of the monetary limits.

CCP 22.09.15.00

With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings? [Study Mat]

Answer :

Legal Provision:-

- As per **section 107(6)** of CGST Act, **no appeal shall be filed** before the Appellate Authority (AA), **unless the appellant has paid:-**
- a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
 - b) **10% of remaining** amount of tax in dispute arising from the said order in relation to which appeal has been filed, subject to maximum ₹20 Crores.
- Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to **25% of the penalty** has been paid by the appellant.
- As per **section 112(8)** of CGST Act, **no appeal shall be filed** before the Appellate Tribunal (AT), **unless the appellant has paid:-**



- a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
 - b) **10% of the remaining** amount of tax in dispute, **in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a **maximum of ₹20 Crore.**
- The above limits are applicable for the pre-deposits to be made under the CGST Act. Accordingly, an equal amount of pre-deposit is payable under the respective SGST/ UTGST Act also.
 - If the appellant has paid the required pre-deposit, then the **recovery proceedings for the balance amount shall be deemed to be stayed** till the disposal of the appeal.

CCP 22.09.16.00

Krish Pvt. Ltd. received an adjudication order demanding CGST and SGST of ₹200 crore each. Krish Pvt. Ltd. filed an appeal to Appellate Authority contesting the entire demand after depositing the mandatory pre-deposit amount. The Appellate Authority heard the appeal and decided in favour of the Department confirming the entire demand. The company filed an appeal to the Appellate Tribunal after depositing the mandatory pre-deposit amount. Determine the mandatory pre-deposit amount required to be deposited under GST law with Appellate Authority and Appellate Tribunal by Krish Pvt. Ltd. while filing appeal. [CA Final MTP Sep 23]

Answer : Legal Provision:

- As per **section 107(6)** of CGST Act, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:-
 - a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
 - b) **10% of remaining amount of tax in dispute** arising from the said order in relation to which appeal has been filed, subject to maximum **₹20 Crores.**
- As per **section 112(8)** of CGST Act, no appeal shall be filed before the Appellate Tribunal (AT), unless the appellant has paid:-
 - a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
 - b) 10% of the remaining amount of **tax in dispute, in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a maximum of **₹20 Crore.**

Discussion & Conclusion:

- In the given case, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal to the Appellate Authority is **₹20 crore [10% of ₹200 crore (tax in dispute)]**. Equivalent amount has to be paid for SGST too.
- Thus, a **total of ₹40 crore** has to be paid by the company as pre-deposit for **filing the appeal to the Appellate Authority.**
- Further, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal before the Tribunal is **₹20 crore [10% of ₹200 crore (tax in dispute)]**. Equivalent amount has to be paid for SGST too.
- Thus, a **total of ₹40 crore** has to be paid by the company as pre-deposit for **filing the appeal to the Appellate Tribunal.**

Nitya Associates is engaged in supplying taxable services in Kerala. The Assistant Commissioner of Central Tax passed an adjudication order under section 74A which was received by Nitya Associates on 18th October. In the said order, GST liability of ₹ 6,00,000 (CGST + SGST) was decided along with interest payable @ 18% p.a. for number of delayed days and a penalty of ₹ 60,000. Nitya Associates was in complete disagreement with said order. So, it filed an appeal before the Appellate Authority on 31st October.

Determine the amount of pre-deposit to be made by Nitya Associates for filing the appeal.

Whether your answer would be different if Nitya Associates appeals only against part of the demanded amount, say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order? [CA Final RTP May 23] [Study Mat- Similar]

Answer : Legal Provision:-

- As per **section 107(6)** of CGST Act, **no appeal shall be filed** before the Appellate Authority (AA), **unless the appellant has paid:-**
 - a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) 10% of remaining amount of tax in dispute arising from said order, subject to maximum ₹20 Crores.
- Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to **25% of the penalty** has been paid by the appellant.
- Equivalent amount is required to be deposited with respect to SGST liability also.

Discussion & Conclusion:-

- Thus, in the given case, Nitya Associates has to make a pre-deposit of 10% of ₹ 6,00,000, which is **₹60,000** (i.e. CGST ₹30,000 and SGST ₹30,000).
- However, when Nitya Associates admits the liability of ₹ 2,00,000 (CGST + SGST) and disputes only the balance tax demanded of ₹ 4,00,000, it has to make a **pre-deposit of:**
 - (i) **₹ 2,00,000 + ₹ 20,000** [proportionate penalty on tax admitted] **+ interest @ 18% p.a.** payable on the tax admitted for the period of delay, **and**
 - (ii) 10% of ₹ 4,00,000 which is **₹ 40,000**.

In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, determine the amount of pre-deposit to be made by the company for filing the said appeal. [Study Mat][CA Final MTP May 25]

Answer:

- ⇒ As per **section 107(6) of CGST Act** read with **section 20 of IGST Act**, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:-
 - a) **full** amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) **10%** of remaining amount of tax in dispute arising from the said order in relation to which appeal has been filed, subject to **maximum ₹40 Crores** in case of IGST.
- ⇒ Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum **equal to 25% of the penalty** has been paid by the appellant.
- ⇒ As per **section 112(8) of CGST Act** read with **section 20 of IGST Act**, no appeal shall be filed before the Appellate Tribunal (AT), unless the appellant has paid:-
 - a) **full** amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) **10%** of the remaining amount of tax in dispute, **in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a **maximum ₹40 Crores** in case of IGST.

Discussion & Conclusion:-

- (1) In given case, pre-deposit for filing an appeal with Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is **₹28 crore** which is **lesser** of following:-
 - a) ₹28 crore i.e. [10% of tax ₹280 crore in dispute] or
 - b) ₹40 crore.
- (2) In given case, pre-deposit for filing an appeal with Appellate Tribunal against the order of Appellate Authority, where entire amount of tax is in dispute, is **₹28 crores** which is **lesser** of following:-
 - a) ₹28 crores i.e. [10% of tax ₹280 crores in dispute] or
 - b) ₹40 crores.

Note:- Similar question is given in [CA final RTP Nov 19] with the following changes in Question and answer:

1. **CGST in dispute ₹280 crore** is given instead of IGST ₹280 crore.
2. Maximum limit of pre-deposit u/s 107(6) & u/s 112(8) shall be **₹20 crore & ₹20 crore, respectively.**
3. The final answers for pre-deposits shall change accordingly as per amended provisions.

CCP 22.10.18.01

In an order passed dated 1st April 20XX issued to Sita Ram Pvt. Ltd., the Commissioner of Central Tax, being Revisionary Authority has confirmed IGST demand of ₹1400 crore, penalty of ₹200 crore and interest of ₹20 crore.

Sita Ram Pvt. Ltd. admits the tax liability, penalty and interest to the extent of ₹200 crore, ₹20 crore and ₹10 crore respectively but wishes to litigate the balance amount of demand and thus, Sita Ram Pvt. Ltd. deposits the required amount of pre-deposit on 12th April 20XX and files an appeal with the GSTAT.

GSTAT decides the appeal in favour of Sita Ram Pvt. Ltd. on 12th June 20XX. Sita Ram Pvt. Ltd. submits an application seeking refund of the pre-deposit along with applicable interest on 2nd July 20XX and the department acknowledges the application on the same day. The amount of pre-deposit is refunded to Sita Ram Pvt. Ltd. on 15th October 20XX.

With reference to provisions of the GST law, compute the amount of pre-deposit required to be deposited before filing an appeal to GSTAT and interest payable by the Department on refund of such pre-deposit, if any, along with necessary explanations. [CA Final May 24 Exam]

Assumption: Assume the year 20XX to be a leap year.

Answer :

- As per **section 112(8) of CGST Act**, the amount of pre-deposit to be made by Sita Ram Pvt. Ltd. for filing the appeal to the GSTAT is as under—
 - (i) full amount of tax, interest and penalty as admitted by it, i.e. **₹230** (₹200 + ₹20 + ₹10) crores and
 - (ii) 10% of the remaining tax in dispute, i.e. ₹120 crore (10% of ₹1,200 crore) subject to a maximum of **₹40 crores** (in case of IGST).
= ₹270 crores
- If the pre-deposit made by the appellant before the Tribunal is required to be refunded consequent to any order of the Tribunal, interest @ **9% p.a.** shall be payable from the date of payment of the amount till the date of refund of such amount.
- **Period of delay counted from 12th April 20XX is 186 days.**
- Interest (rounded off) = ₹40 crore × 9% × 186/366 = **₹182,95,082**

CCP 22.10.21.00

Answer the following questions independently:-

2. What is the time limit for filing an appeal before the Appellate Tribunal?

Answer :

- | | |
|------------|---|
| (2) | <ul style="list-style-type: none">➤ As per section 112 of CGST Act, an appeal can be filed before the Appellate Tribunal (AT) within 3 months from the later of:-<ul style="list-style-type: none">➢ the date on which the order sought to be appealed against is communicated to the➢ person preferring the appeal; or➢ the date, as may be notified by Govt., on recommendations of Council, for filing appeal before the Appellate Tribunal.➤ The Tribunal can condone the delay of up to 3 months beyond the time period specified above, if it is satisfied that there was sufficient cause for the delay. |
|------------|---|