



CA Vishal Bhattad

Chapter 18 - DEMAND & RECOVERY

Proceeding in case where

Non-Payment of Tax

Short Payment of Tax

Erroneous Refund

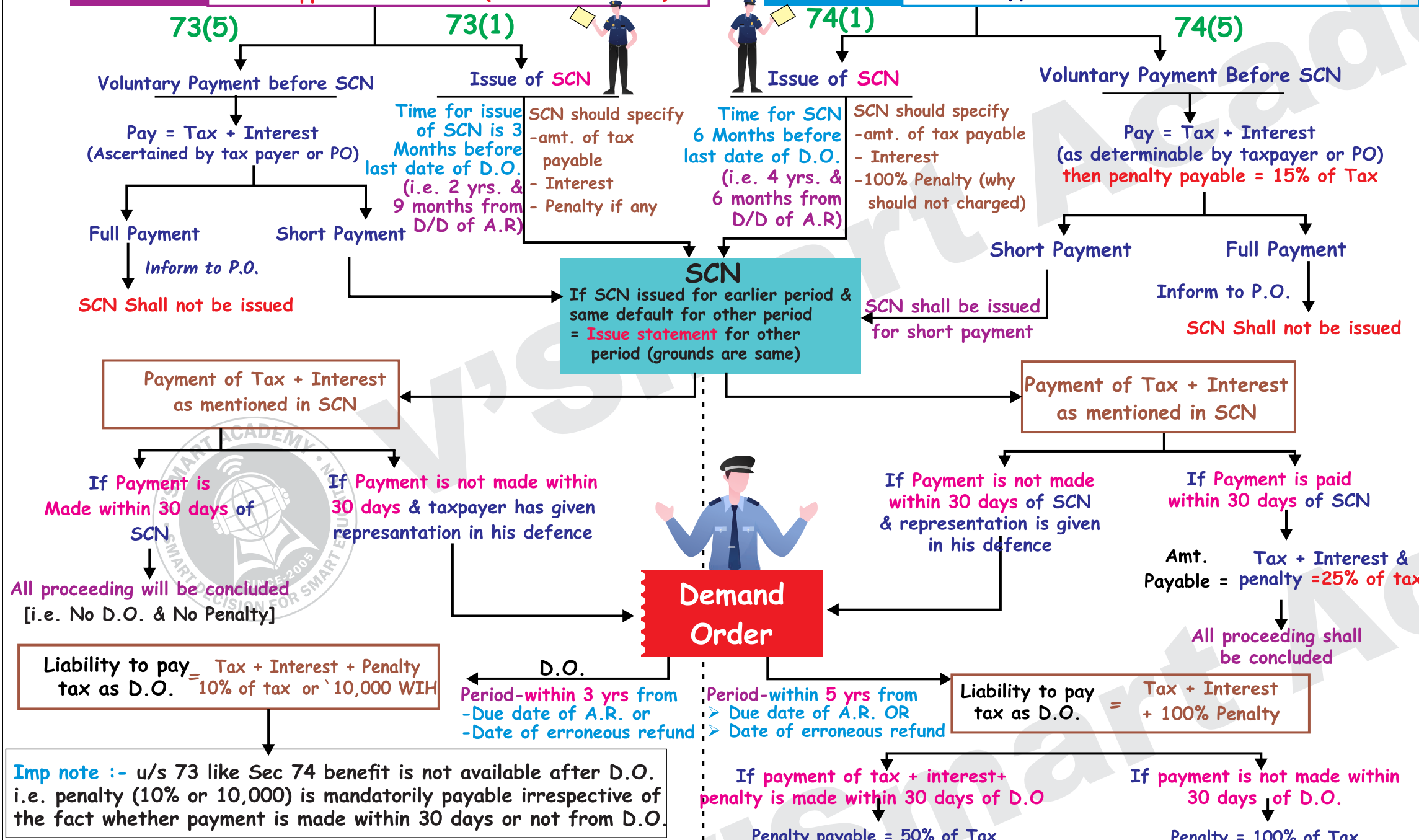
Wrong - availment or utilisation of ITC

Excess collection of Tax

Sec 73 Above cases other than fraud, wilful misstatement or suppression of facts (Bonafide intention)

Sec 74 Above cases by reason of fraud wilful misstatement or suppression of facts (malafide intention)

Sec 76 Tax collected but not paid to Government



Imp note :- u/s 73 like Sec 74 benefit is not available after D.O. i.e. penalty (10% or 10,000) is mandatorily payable irrespective of the fact whether payment is made within 30 days or not from D.O.

Important Notes :-
i) All proceedings in respect of the said notice shall not include proceedings u/s 132/129/130
ii) Proceedings against the main person have been concluded u/s 73 or sec 74 or sec 74A, the proceedings against all the persons liable to pay penalty u/s 122, 125 are deemed to be concluded.
iii) Provisions of 73, 74 shall be applicable for determination of tax pertaining to period upto F.Y. 2023-24.

iv) For the purposes of this Act, the expression "suppression" shall mean
➤ non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
➤ failure to furnish any information on being asked for, in writing, by the proper officer.

- 1 Tax collected from any person to be paid to the CG:- Every person collected tax and has not paid it to Govt. = shall immediately pay the said amount to Govt.. (Irrespective of whether relevant supplies are taxable or not).
- 2 Issue of SCN:- If above amt. 76(1) has not been paid, PO = may serve a SCN = on the person liable to pay such amount Tax & Penalty, Note- There is no time limit for Serving SCN under this section
- 3 Demand Order:- After considering representation, PO shall determine the amt. due from such person & thereupon, such person shall pay the amount so determined.
- 4 Interest Payment:- Person shall pay interest @ 18% PA {u/s 50}, from the date of collection - to the date of payment to Govt.
- 5 Opportunity of being heard:- Opportunity of hearing shall granted if request in written, received from such person)
- 6 Time limit for Issuance of Order:- Within 1 year- from the date of issue of SCN. {No time limit for issue of SCN}
- 7 Period of stay excluded:- Where issuance of order- stayed by an order of the Court/Appellate Tribunal stay period-excluded from period of 1 Year.
- 8 Order must be a speaking order:- PO = set out relevant facts & the basis of his decision.
- 9 Adjustment of amount payable u/s 76(1) & (3):- Amount paid to Govt. (Sub-sec.1/3)=adjusted against tax payable by person, i.r.t. supplies (sub-sec.1)
- 10 Surplus after adjustment:- Amount of surplus (after adj. above)= *Credited to the Welfare Fund, (or) *Refunded to the person, borne the incidence of such amount.
- 11 Refund :- Person- borne incidence of the amount= may apply for refund

Sec 73(11) :- Where amount of self-assessed tax is declared in GSTR-1 not paid within 30 days from the due date of payment of tax then **mandatory penalty = 10% of tax or ₹ 10,000 WIH**

Short Payment or non-payment of tax within due date read with cir. no. 76/50/2018

If Tax is self assessed (declared in GSTR-1) but not paid within 30 days of due date of return

If GSTR - 3B is filed (with payment of tax & Interest) after 30 days of due date of return but before issue of SCN u/s 73(1) (i.e. Sec 73 is not invoked)

Tax Payable = Yes
Interest = Yes u/s 50(1) delay payment of tax
Late fee = Yes u/s 47 (200 per day, max = 10,000)

Penalty u/s 73(11) = No, (as power u/s 73(1) is not invoked)

If proceeding u/s 73 is invoked (i.e. SCN is issued) before furnishing GSTR-3B & payment of tax interest (Delay more 30 days from due date)

1) Tax Payable = Yes
2) Interest = u/s 50(1)
3) Late fee of return = Yes u/s 47
4) Mandatory penalty = Yes power is invoked u/s 73

u/s 73(11) = 10% of tax or ₹10,000

Sec 77: Tax wrongfully collected & paid to CG/SG

- ⇒ If a RP pays CGST/SGST/UTGST thinking it's an intra-State supply, but it's later confirmed as inter-State, they can **get a refund**.
 - ⇒ If an RP pays IGST thinking it's inter-State but it's actually intra-State, they won't **owe interest** on CGST and SGST/UTGST.
- Note:** Similar rules are in Section 19 of the IGST Act.

Sec 78: Initiation of recovery proceedings

- ⇒ A taxable person must pay any amount due **within 3 months** of receiving the order. If not, recovery proceedings will begin.
- ⇒ The authority may require payment in < 3 months, with **written reasons**.

Sec 79: Mode of Recovery of Tax

- ⇒ Tax authorities can **deduct outstanding dues** from amounts owed to a TP.
- ⇒ The authority can **detain and sell** a taxable person's goods to recover dues.
- ⇒ Money owed to a taxable person can be recovered from a **third party**.
- ⇒ The authority can **seize movable or immovable property** until dues are paid.
- ⇒ Recovery can start through the **District Collector** where the TP has property or business, treating it as land revenue arrears.
- ⇒ An application can be made to the **Magistrate** for recovery as a fine.
- ⇒ Recovery can be pursued through a **civil court** decree against the surety for the defaulter's dues.
- ⇒ For companies in liquidation, dues can be notified to the **liquidator** for recovery.
- ⇒ Dues can be recovered through **bonds executed** under GST law.
- ⇒ **CGST arrears** can be recovered as **SGST arrears** and vice versa.

Sec 80: Payment of tax and other amount in instalments

- ⇒ The Act allows instalment payments (excluding self-assessed tax) upon request to the Commissioner. Up to **24 monthly instalments** may be approved, but missing one makes the full balance due immediately.
- ⇒ A taxable person can apply for **extension**. The Commissioner will review the person's financial ability and may grant extensions up to 24 monthly instalments with interest.
- ⇒ Instalment payments are **denied** if there are current defaults on CGST/IGST/UTGST/SGST or if instalments were denied last year, or if the amount is under ₹25,000.

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

- ⇒ If a person transfers property (Sale, mortgage) to defraud the government after an amount is due, the transfer is **void** against tax claims.
- ⇒ **Exceptions** include valid transfers made for adequate consideration, in good faith, without knowledge of pending claims, or with prior permission from the PO.

Sec 82: Tax to be first charge on property

Any tax, interest, or penalty owed is a **first charge** on a taxable person's property, overriding other laws, **except** under the Insolvency and Bankruptcy Code.

Rule 88C: Manner of dealing with difference in liability in GSTR 1 & GSTR 3B:

- ⇒ If tax payable in **GSTR 1/GSTR-1A** exceeds in **GSTR 3B**, RP shall pay **differential tax amount along with interest** in prescribed form & also **explain the difference within 7 days**.
- ⇒ If he failed to do so, the amount shall be **recoverable as per Sec 79**.

Rule 88D: Manner of dealing with difference in ITC available in autogenerated statement containing the details of ITC and that availed in return

- (1) **Intimation for difference in GSTR-3B & 2B:-** If ITC availed by RP in GSTR-3B exceeds ITC available in GSTR-2B for a tax period(s) by prescribed % or amount, difference shall be intimated to him.
- (2) **Time limit to pay excess ITC availed:-** RP has to pay excess ITC availed + interest u/s 50 or explain reasons (reply) for such difference within 7 days.
- (3) **Consequences for failure :-** If intimated amount is not paid partly or wholly within time limit & reply is also not furnished or furnished reply is not acceptable, it will be demanded u/s 73 or 74.

Sec 75: Determination of Tax (General prov.)

- ⇒ Period of stay- If issuance of SCN/DO is stayed by Court/AT= excluded from period of SCN/DO for fraud/other than fraud/Sec 74A.
- ⇒ If AA/AT concludes that charges of fraud are not sustainable- SCN u/s 74(1)= SCN u/s 73(1).
- ⇒ Order on direction of Court= such order shall be issued within 2 yr from the date of communication of direction.
- ⇒ Opportunity of being heard to aggrieved person.
- ⇒ Adjournment (for reasons in written)=Upto 3 times to a person
- ⇒ Order=Speaking (set out relevant facts & basis for his decisions)
- ⇒ **Amount demanded in order shall not exceed amount in SCN**
- ⇒ If AA/AT/court modifies amount of tax- modify Interest/penalty accordingly.
- ⇒ **Interest= mandatory (even if not specified in SCN)**
- ⇒ If no DO is issued within the time limits u/s 73(10), 74(10), or 74A(7) then proceeding deemed to be concluded.
- ⇒ If appeal filed by dept., against decision of AT/AA/court= Period b/w date of decision of higher authority & lower authority= excluded from period of SCN/DO
- ⇒ **If any amount of self assessed tax(in return)/amount of interest =remains unpaid=recovered u/s79.**
- ⇒ **If penalty u/s 73/74/74A imposed = no other penalty applies.**

Sec 83: Provisional attachment to protect revenue in certain cases

- ⇒ The Comm. can **provisionally attach** a TP's property (including bank accounts) after proceedings of Assessment, Inspection, search, seizure, arrest, Demand & recovery for 1yr.
- ⇒ Perishable/hazardous property will be released if the TP pays the market price or the owed amt., **whichever is lower** upon proof of payment. If not paid, comm. may dispose such property.
- ⇒ A person can object to the attachment, and the Commissioner **may release** it if justified.
- ⇒ If property is with Court/Public Officer, An attachment order will **hold it until** the debt is recovered.
- ⇒ To attach **partner's interest**, the authority can charge the partner's share, Appoint a receiver for profits & Order the sale of the interest. Other partners may redeem or buy it.

Sec 84: Continuation and validation of certain recovery proceedings

- ⇒ If government dues are **increased**, the Commissioner will issue a new notice, and recovery can continue from where it left off before the appeal.
- ⇒ If dues are **reduced**, no new notice is needed. The Commissioner will inform the taxable person and authority & recovery will continue based on the reduced amount.