



GST Refresher Course

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Topic 6: Refund, Assessment and Audit

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Notice for Demand

Section 73

No intention of Fraud

Demand Notice before 3 Months of Order

Order with in 3 Years

Section 74

Intention of Fraud

Demand Notice before 6 Months of Order

Order With in 5 Years

From the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 3/5 years from the date of erroneous refund.

Quantum of Penalty

		S. 73	S. 74
1	Before notice u/s 73 or 74 (i.e. During Audit or during Assessment Proceedings)	Nil	15% of Tax
2	With in 30 days of Notice	Nil	25%
3	After Order	10%	50%

Various Powers

POWER TO
RECOVERY S. 79

POWER TO
SUMMON S. 70

POWER TO ARREST
S.69

INSPECTION SEARCH &
SEIZURE
S. 67, 68 & 71

AUDIT S. 65 & 66

ASSESSMENT
S. 60 to S. 64

Types of Assessments

PROVISIONAL ASSESSMENT u/s 60

- Taxable person may request PO to determine Value or Rate of Tax
- PO with 90 days of request pass the order.
- Execute bond with Surety or Security for payment of difference, if any as per Final order
- PO pass Final order with 6 months (Further extendable upto 6 Months) of Provisional order
- Interest will be paid or charged as the case may be as per the final amount.

2. REGULAR ASSESSMENT

i) FOR REGULAR RETURN FILERS

SCRUTINY OF RETURNS u/s 61

- PO May scrutinise the return to verify its correctness
- Inform discrepancies found if any, to RP
- In case no proper explanation is furnished by RP with in 30 days or further time permitted then action u/s 63/64/67 can be taken or demand notice u/s 73/74 may come.

ii) BEST JUDGEMENT ASSESSMENT

FOR NON FILERS u/s 62

NOTE: If return not filed u/s 39 or 45 even after notice for return filing Notice u/s 46 then PO will do the assessment as per his best judgement with in 5 Yrs.

FOR NON REGISTERED PERSON u/s 63

If a person fails to obtain registration or registration got cancelled u/s 29(2) and liable to pay tax then PO will do the assessment as per his best judgement with in 5 Yrs.

3. Summary Assessment u/s 64

Types of Audit

S. 65

AUDIT BY TAX AUTHORITIES

- By Commissioner or Any officer Authorised by him
- For such period at such frequency and manner as may be prescribed.
- At the place of business of RP or in department office.
- RP shall be informed before 15 working days.
- Audit needs to be completed with in 3 Months from the date of commencement of Audit further extendable upto 6 months for reasons recorded in writing.
(NOTE: Commencement of Audit mean the date on which the records and other documents called for are made available by RP)
- PO shall within 30 days inform the RP about the Audit findings
- If any demand then PO may issue notice u/s 73/74.

S. 66

SPECIAL AUDIT by CA or COST ACCOUNTANT

- During any proceedings if officer not below AC having regard to nature and complexity of the case and in the interest of revenue he may with approval of commissioner direct RP to get his Accounts audited by CA or Cost Accountant.
- CA or Cost Accountant shall submit his report with in 90 days (Further extendable upto 90 days.).
- Opportunity shall be given to RP if any material of Audit is used against him.
- Expenses of Audit shall be determined and paid by commissioner.
- If any demand then PO may issue notice u/s 73/74.

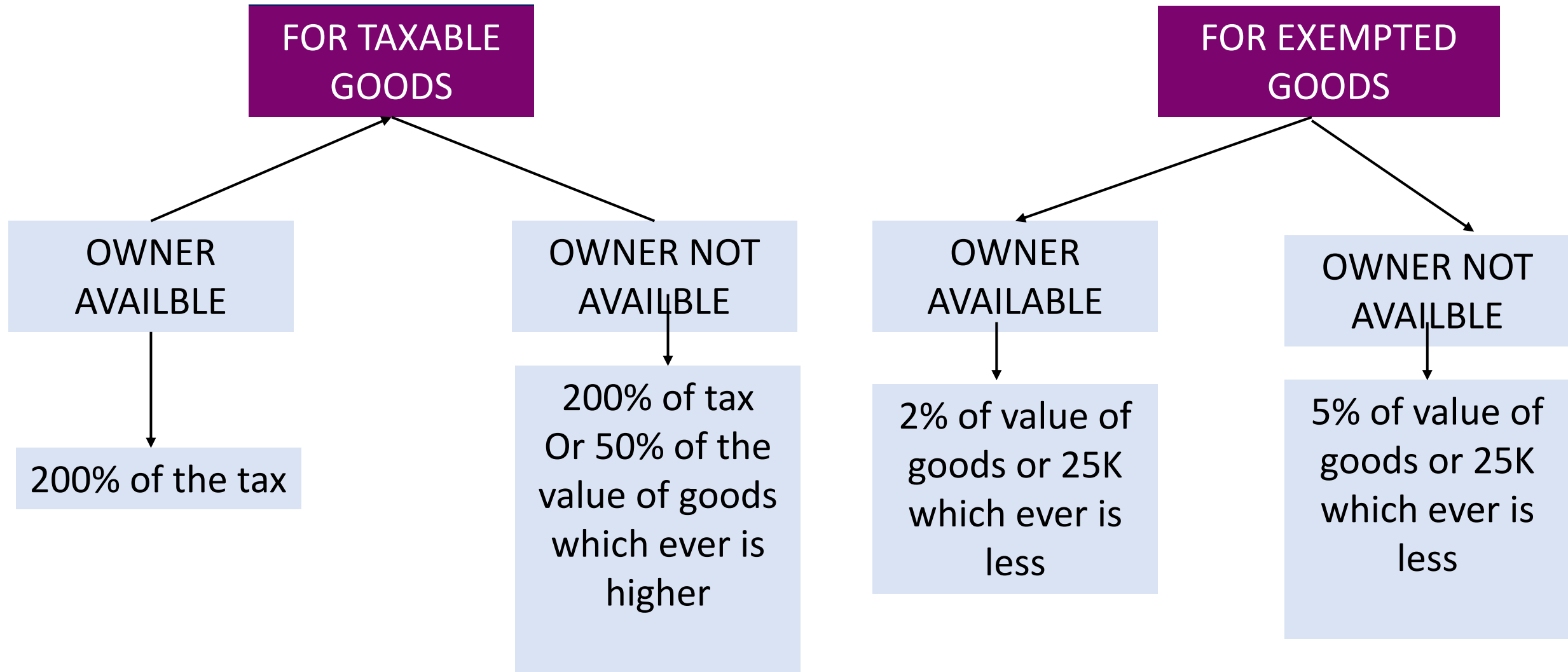
Inspection, Search & Seizure

SEARCH
SEIZURE ON
PREMISES S. 67

DURING
MOVEMENT OF
GOODS
S. 68 r.w.s. 129
(See penalty
chart of S. 129
on next slide)

ACCESS TO
PREMISES
S. 71

PENALTY u/s 129 (When Goods in Transit)



Power to Arrest S. 69

Where the Commissioner has reasons to believe that a person has committed **any below mentioned offence** i.e. specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1) **i.e. In excess of Rs. 2Cr.**, or sub-section (2) of the said section **i.e. Repeated Default**, he may, by order, authorise any officer of central tax to arrest such person.

(a) **supplies** any goods or services or both **without issue of any invoice**, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) **issues any invoice or bill without supply** of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) **avails input tax credit** using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill

(d) collects any amount as tax but **fails to pay the same to the Government beyond a period of three months** from the date on which such payment becomes due;

S. 70 Power to Summon

PO shall have the power to summon any person whose attendance necessary in any inquiry in the manner provided in Code of Civil Procedure, 1908 & such proceedings shall be considered as judicial proceedings with in the meaning of S 193 and S. 228 of IPC.

S. 79 Recovery of Tax

If amount payable to the Govt is not paid by any person

- a) PO may deduct or instruct to other officers to deduct from any money owing to such person
- b) Detaining or selling of goods belonging to such person.
- c) - By notice in writing instruct any person i.e to Debtors, Bank, Post office etc. to pay to Govt. instead to such person.
 - Every such person bound to comply notice so issued.
 - If such person fails to comply such notice he shall be treated defaulter to extent of amount mentioned in the notice.
- d) Distrain any movable or immovable property belonging to such person.
- e) Send a certificate of amount payable to collector of concerned area then it will recovered as land revenue.
- f) PO may file application to Appropriate magistrate then Magistrate will recover the amount as fine imposed by him.

S. 77(1) of CGST Act & S. 19(1) of IGST Act

Procedure for the Refund of tax paid under the Wrong Head

Read with Cir 162 Notf. 35 dated 24-09-2021 & Rule 89

Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 vide notification No. 35/2021-Central Tax dated 24.09.2021.

This amendment clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of **two years from the date of payment of tax under the correct head**, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be.

However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

Comparative Reading of S. 73 & S.74

Sub-section	Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-	Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts.-
1	Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax , he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.	Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax , he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.
2	(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.	(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

Comparative Reading of S. 73 & S.74

3	Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.	Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
4	The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.	The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73 , subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax , for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.
5	The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.	The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
6	The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.	The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

Comparative Reading of S. 73 & S.74

7	Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.	Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
8	Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.	Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice , all proceedings in respect of the said notice shall be deemed to be concluded.
9	The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.	The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
10	The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.	The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

Comparative Reading of S. 73 & S.74

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Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.- For the purposes of section 73 and this section,-
(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;
(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under 1[sections 122 and 125] are deemed to be concluded.

Explanation 2.- 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.

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**THANK
YOU**

