

DEMANDS & RECOVERIES under **GST**



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AGENDA

- DEMANDS
- RECOVERIES
- RECTIFICATION OF MISTAKE(s)

A wooden gavel with a brass band is positioned diagonally across an open book. The gavel's head is resting on the left page, and its handle extends towards the right. The book is open, showing two pages of text. The word "DEMANDS" is superimposed in a large, dark serif font across the center of the image, partially overlapping the book and the gavel.

DEMANDS

OVERVIEW - Sections 73-74

Tax	ITC
<ul style="list-style-type: none">• not paid• short paid or• erroneously refunded	<ul style="list-style-type: none">• wrongly availed or• wrongly utilised

By reason of:

- Fraud or wilful-misstatement or suppression of facts to evade tax (Section 74); or
- Other than those in Section 74 (Section 73)

Proper Office shall serve a Show cause notice (“SCN”) on the person chargeable with the said amount along with interest and penalty, as applicable.



Suppression

- ▶ Explanation 2 - “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.



DEMANDS - Time Limit

PARTICULARS	NORMAL CASES	FRAUD CASES
Time limit for issuing order (if adjudication order not passed within the time limit, proceedings <u>deemed to be concluded</u>)	3 years from the due date for annual return	5 years from the due date for annual return
Time limit for issuing SCN	At least 3 months prior to time-limit for issue of order	At least 6 months prior to time-limit for issue of order

Stay of service of SCN/issuance of order at a higher forum: the period of such stay shall be excluded while computing the above time limit.

If the SCN issued u/Section 74 is held to be unsustainable because charges of fraud etc. were not established: the tax payable by such person will be determined u/Section 73



When are the proceedings deemed to be concluded?

PARTICULARS	NORMAL CASES	FRAUD CASES
If tax is paid along with Interest before serving of SCN	Proceedings are deemed to be concluded.	Proceedings deemed to be concluded upon payment of penalty of 15% of demand.
If tax is paid along with interest within 30 days of issue of SCN	<ul style="list-style-type: none">• No penalty• All proceedings deemed to be concluded	Proceedings deemed to be concluded upon payment of penalty of 25% of demand.
If tax paid along with interest within 30 days of Order	No provision	Proceedings deemed to be concluded upon payment of penalty of 50% of demand.
If amount not paid within 30 days	Penalty @ 10% of the amount due or Rs. 10,000 whichever is higher	Penalty equal to the demand or Rs. 10000 whichever is higher

REMAND u/Section 75(3)

- ▶ Where order is required to be issued in pursuance of remand directions:
 - ▶ Time limit for issuing order: 2 years from date of communication of direction (mandatory time limit)
 - ▶ What if not passed within 2 years? – no implication
 - ▶ An opportunity of hearing to be granted on a written request or where an adverse decision is contemplated against such person
 - ▶ Adjournment can be granted on sufficient cause being shown: upper limit of three adjournments
 - ▶ The amount of tax, interest and penalty shall not be:
 - ▶ In excess of the amount as specified in the SCN
 - ▶ On any grounds other than those mentioned in the SCN.



POINTS TO PONDER

Sections 73/74 are not Omnipotent

- Time limit u/Section 73(10) for **registered persons who are not required to file Annual Return u/Section 44?**
 - Demands on ISD/casual taxable person/non-resident taxable person/person paying tax under TDS or TCS
- Section 73 not applicable to demands for recovery of Transition Credit: **Commercial Steel Engineering Corporation vs. State of Bihar 2019 (7) TMI 1452 - PATNA HIGH COURT**
- ITC wrongly availed but not utilised: demand u/Sections 73 or 74?

Elements conspicuously absent

- 'Intent To' Evade Tax –inherent in provision or no more relevant?
- 'Collusion' not an ingredient for invoking extended period

Miscellaneous

- Explanation to Section 73 and 74: Prosecution u/Section 132 is excluded
- Section 75(13) - excludes application of other penal proceedings
- Statement of Demand can be issued if on same ground as Base SCN
- Protective Show Cause Notices - relevance in light of Section 75(11)?

A wooden gavel with a brass band is positioned diagonally across the top of an open book. The gavel's head is on the left, and its handle extends towards the right. The book is open, showing two pages with dense, small text. The word "RECOVERY" is printed in a large, dark, serif font across the center of the open pages. The background is a plain, light color.

RECOVERY

Recovery Of Tax Collected but not Paid - Section 76

Amount(s) collected representing tax to be paid to Govt. – even if underlying supplies are not taxable

SCN to be issued - no time limit specified for SCN -**Interest** provisions are applicable

Personal hearing to be granted upon specific written request

Time limit for issue of Order: 1 year from date of issue of SCN.

If proceedings stayed by higher court, time spent before higher fora to be excluded from time limit of 1 year.

Amount paid to Govt. shall be adjusted against the tax payable on the said transaction.

Any excess will be credited to Fund or refunded to person who has borne tax incidence



Tax wrongfully collected and paid to Central Government or State Government – Section 77

CGST/SGST/UTGST paid on supply subsequently held to be Inter-state Supply

- CGST/SGST/UTGST paid shall be refunded
- IGST to be paid – without interest [S. 19(2) of IGST Act]

IGST paid on supply subsequently held to be Intra-state supply

- IGST paid shall be refunded
- CGST/SGST/UTGST to be paid – without interest

Recovery of Tax - Section 78

Recovery proceedings get triggered when amount demanded not paid **within 3 months**

Proper officer may require said person to pay within a period less than 3 months - reasons to be recorded in writing

- Applies to S. 76 proceedings as well
- After 3 months, can recovery be initiated even if condonable period for filing appeal is alive?
- Can assessee avert recovery by simply paying pre-deposit without filing an appeal : Section 107(7) and Section 112(9)
- Appeals to HC: Time limit for filing appeal is 180 days. Can recovery still be initiated after 3 months?

Recovery of tax by Proper Officer u/Section 79

- + Deduct/ recover the amount payable out of money owed to Person or detain and sell goods belonging to the person
- + Recover from another person who owes money to the liable person. Notice to be issued. This notice can be amended or revoked or extended for time at any time by the officer.
- + Distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid
- + Prepare and sign a certificate specifying the amount due and send it to the Collector of the district who shall proceed to recover the same
- + File an application to the appropriate Magistrate who shall recover the amount as if it were a fine imposed

- Section 79(1)(c) is analogous to Section 226(3) of Income Tax Act, 1961
- 'Person' as defined in Section 2(84) – Individual/HUF/Firm/LLP/Co-operative Society/ AoP, etc.
- Distinct Persons u/Section 25 : recovery can be initiated against different registration when entity has multiple registrations

Payment in Instalments u/Section 80

NO EXTENSION

for amount self-assessed in any return

Application by Taxable person seeking extension of time for payment of any amount due u/this Act

Commissioner may allow payment-

- in monthly instalments not exceeding twenty four
- Interest u/Section 50 to be applicable
- Other conditions as prescribed in R 158
- Written reasons for allowing extension

Any default in payment of instalment on due date : whole outstanding dues are payable and recovery action can be initiated w/o further notice..

Transfer of Property- when void u/Section 81

Charge created on property
(sale/mortgage/exchange/
other mode of transfer)
**with the intention of
defrauding the
Government revenue**

transfer is void against any
claim in respect of tax or any
other sum payable

**Charge or Transfer not
void if**

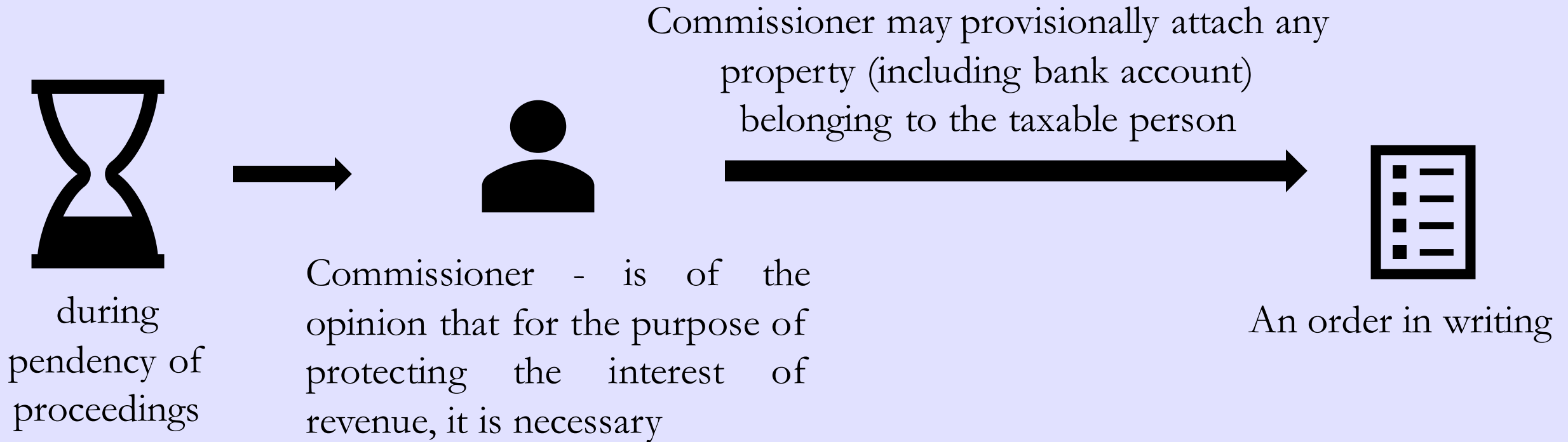
- For adequate consideration
- in good faith
- without notice of the pendency of proceedings against transferor
- without notice that tax or other sum is payable by transferor
- With prior permission of the proper officer.

Tax Dues to be First Charge on Property

Any amount payable by a taxable person or any other person on account of tax, interest or penalty liable to be paid to the Government shall be first charge on the property

- Notwithstanding anything to the contrary contained in any law for the time being in force,
- save as otherwise provided in the Insolvency and Bankruptcy Code, 2016

Provisional Attachment to protect Revenue – Section 83



- ✓ Such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order



Continuation & Validation of certain recovery proceedings – Section 84

When appeal is filed/proceedings initiated in respect of such Government Dues and the proceedings result in

Enhancement of Government Dues

- Commissioner to serve notice for enhanced amount alone
- recovery proceedings wrt Government dues covered by demand notice served prior to disposal of such proceedings will be continued from the stage at which such proceedings stood immediately before such disposal

Reduction in Government Dues

- no fresh notice of demand warranted (for reduced amount);
- the Commissioner must intimate reduction in Government Dues to taxable person and to the appropriate authority with whom recovery proceedings is pending;
- any recovery proceedings initiated on the basis of the demand served prior to the disposal of proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Government Dues = Any Notice of demand for any tax, penalty, interest or any other amount payable under this Act



Rectification of Mistake – Section 161

- ▶ Rectification of errors apparent on the face of record:

- ▶ Any authority who has passed the decision, notice, order or certificate
- ▶ May rectify the errors apparent on the face of the record
- ▶ Suo moto within 6 months from date of issue or
- ▶ When brought to notice – time limit for bringing to the notice is 3 months from date of issue – time limit for passing order is 6 months from date of issue

- ▶ No rectification can be done after 6 months from date of issue in either case
- ▶ Time limit shall not apply if the rectification is purely for correction of a clerical or arithmetical error due to any accidental slip or omission.
- ▶ In case of adverse impact, the concerned person shall be given an opportunity to be heard.





A low-angle, perspective shot of a wooden boardwalk made of weathered planks, receding towards a distant horizon. The sky is a vibrant orange and yellow, indicating a sunset or sunrise, with soft, wispy clouds scattered across it. The overall mood is peaceful and contemplative.

Thank You