

DEMANDS AND RECOVERY

CHAPTER XV OF THE CGST ACT

Chapter 15 of the act, which discusses the procedures for how the officers will determine the unpaid tax detected, issue notices and orders, and the various recovery mechanisms available with them if the assessee does not pay.

Short Forms used:-

“Tax not paid” = Tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilised

“FRAUD” = ‘fraud’ or any wilful-misstatement or suppression of facts to evade tax

AA = Appellate Authority; AT = Appellate Tribunal; HC = High Court; SC = Supreme Court



Where it appears to the PO that → any 'Tax not paid' ---

Event	OTHER THAN BY 'FRAUD' (Sec 73)	BY REASON OF 'FRAUD' (Sec 74)
SCN	Then he shall serve a show cause notice & a summary thereof in FORM GST DRC-01, on the person chargeable with 'Tax not paid', as to why he should not pay the amount specified along with interest payable thereon u/s 50	
	And a penalty (amount not specified in SCN)	And a penalty of 100% of tax specified in the notice
Time limit	Notice must be served at least 3 months prior to order	Notice must be served at least 6 months prior to order
Time limit of order	Order must be issued within 3 years from the due date of annual return for the FY to which the 'Tax not paid' relates, or within 3 years from date of erroneous refund	Order must be issued within 5 years from the due date of annual return for the FY to which the 'Tax not paid' relates, or within 5 years from date of erroneous refund
Statement deemed to be SCN	Where a SCN has been issued for any period, and 'Tax not paid' is detected for any other period under same grounds as that of SCN, then PO may serve a 'statement' & a summary thereof electronically in FORM GST DRC-02, containing the details of 'Tax not paid' for those other periods (not covered in SCN); and the service of such statement shall be deemed to be service of notice for those other periods. (Grounds of "FRAUD" need not be same)	
Payment before SCN	The person may, before service of SCN/ statement, pay tax + interest + penalty (on the basis of own ascertainment or as ascertained by the PO) and inform the PO in FORM GST DRC-03.	
	Penalty = Nil	Pay Penalty @ 15% of tax
	On receipt of such information, The PO shall issue an acknowledgement accepting the payment made in FORM GST DRC-04 & not serve any SCN/ statement in respect of the tax so paid or any penalty payable.	
Short Paid	Where the PO is of the opinion that the amount paid as above falls short of amount payable, then shall proceed issue SCN in respect of remaining amount	
Payment < 30 days of SCN	Where paying the tax + interest + penalty within 30 days of issue of SCN, then proceedings will be concluded	
	No penalty	Penalty @ 25% of tax
	Intimate the PO of such payment in FORM GST DRC-03 and the PO shall issue an order in FORM GST DRC-05	
Order by PO	The person may make a representation against the SCN in FORM GST DRC-06. After considering the representation made by person (if any), the PO shall determine the amount due from such person and issue an order, along with a summary in FORM GST DRC-07, specifying the amount of tax, interest and penalty payable	
	Penalty = 10% of tax or Rs. 10,000, whichever is higher	Penalty automatically = 100%, as specified in SCN
Special	Where any amount of self-assessed tax or any amount collected as tax has not been paid < 30 days of due date, Penalty @ 10% will be payable, notwithstanding that amount paid before SCN, or within 30 days of SCN.	Where person served with an order pays the tax + interest + penalty @ 50% of tax < 30 days of communication of the order, all proceedings in respect of the said notice deemed to be concluded.

SECTION 73 & 74: 'TAX NOT PAID' - OTHER THAN 'FRAUD' AND BY 'FRAUD'

“All proceedings in respect of the said notice” shall not include proceedings u/s 132;

Where notice under 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 u/s 73/ 74, proceedings against all the persons liable to pay penalty u/s 122, 125, 129 and 130 are deemed to be concluded.

“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, or failure to furnish any information on being asked for, in writing, by the PO.

SECTION 75 – DETERMINATION OF TAX – GENERAL PROVISIONS

- Where the service of notice/ issuance of order is **stayed** by an order of a court/ AT, the period of such stay shall be excluded in computing the time limits of 3 months/ 6 months for SCN and 3 years/ 5 years for order, u/s 73 & 74.
- Where proceedings are initiated by way of issue of a SCN u/s 73/ 74, and an issue on which –
 1. AA/ AT/ HC has given its decision which is **prejudicial** to the interest of revenue in some other proceedings, and
 2. an **appeal** to the AT/ HC/ SC against such decision of the AA/AT/ HC is pending;
the period spent between the date of the decision of the – AA and AT, or, AT and HC, or, HC and SC; → shall be excluded in computing the time limit of issuing order u/s 73(10)/ 74(10) [3 years & 5 years]
- Where any order is required to be issued in pursuance of the **direction** of the AA/ AT/ court, such order shall be issued within 2 years from the date of communication of the said direction.
- Where any AA/ AT/ court concludes that the notice issued under Section 74(1) [‘Tax not paid’ by reason of ‘FRAUD’] is **not sustainable** for the reason that the charges of ‘Fraud’ has not been established against the person, the PO shall determine the tax payable, deeming as if the notice were issued under Section 73(1) [Other than ‘FRAUD’].
 - Notwithstanding anything contained in section 73 or section 74, where any amount of **self-assessed tax** in accordance with a return furnished u/s 39 remains **unpaid**, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
 - Where any penalty is imposed u/s 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.
- An **opportunity of hearing** shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- If sufficient cause is shown, the PO shall grant time and **adjourn** the hearing for reasons to be recorded in writing. No such adjournment shall be granted for more than 3 times to a person during the proceedings.
- The PO shall set out the relevant **facts** and the **basis** of his decision, in his order.
- The amount of tax, interest and penalty demanded in the order shall **not be in excess** of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
- Where the AA/ AT/ court **modifies** the amount of tax determined by the PO, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
- The **interest** on the tax short paid or not paid shall be **payable whether or not specified** in the order determining the tax liability.
- The adjudication proceedings deemed to be **concluded**, if order not issued within 3 years/ 5 years as per 73(10)/ 74(10).
- Any **rectification** of the order, as per section 161, shall be made by the PO in FORM GST DRC-08.

SECTION 76: TAX COLLECTED BUT NOT PAID

- **NWA**, every person who has **collected** from any other person any amount as representing the tax under this Act, and has **not paid** the said amount to the Government, shall forthwith 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 not been so paid, the PO may serve a **notice**, along with a summary in FORM GST DRC-01, requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty = 100% of the amount should not be imposed on him.
- An **opportunity of hearing** shall be granted where request is received, & he may make representation in FORM GST DRC-06.
- After considering the representation made, if any, the PO shall determine the amount due, shall issue an **order**, setting out the relevant facts and the basis of his decision, along with a summary in FORM GST DRC-07, within 1 year from the date of issue of SCN. [Where the issuance of order is stayed by an order of the court/ AT, the period of such stay shall be excluded in computing the period of 1 year]
- The person shall in addition to paying the amounts of tax & penalty, also be liable to pay **interest** from the date such amount was collected by him to the date such amount is paid by him to the Government.
- If goods was **taxable**, and tax was payable, then amount paid by assessee shall be adjusted against his liability. Where any **surplus** is left after the adjustment (the supply might not be taxable, rate difference etc.), the amount of such surplus shall either be credited to the Fund (Consumer Welfare Fund) or refunded to the person who has borne the incidence of such amount, who may apply for the refund of the same in accordance with the provisions of section 54.



SECTION 77: TAX WRONGFULLY COLLECTED AND PAID (INTER-INTRA CONFUSION)

- RTP who has paid the CGST + SGST/ CGST + UTGST 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.
- RTP who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an **intra-State supply**, shall not be required to pay any interest on the amount of CGST + SGST/ CGST + UTGST payable.



SECTION 78 & 79: RECOVERY

- The order issued by a PO u/s 73/74/76 shall be treated as the **notice for recovery**.
- Any **amount payable** by a taxable person in pursuance of an order passed under this Act shall be **paid** by such person **within** a period of **3 months** from the date of service of such order failing which recovery proceedings shall be initiated. (PO may require assessee to pay within period specified, less than 3 months, for reasons to be recorded in writing, if he considers it expedient in the interest of revenue)
- Where any amount payable is not paid, the PO shall proceed to recover the amount by one or more of the following modes :—

- I. By Deduction
- II. By Detention and Sale of Goods
- III. From Third Person
- IV. By Attachment and Sale of Property
- V. Through Collector
- VI. Through Magistrate



I. BY DEDUCTION

The PO may **deduct** (or may require any other specified officer to deduct, in FORM GST DRC-09) the amount so payable from any money owing to such person which may be under the control of the PO or such other specified officer. [“Specified officer” shall mean any officer of the CG/ SG or the Government of a UT/ LA, or officer of a Board or Corporation or a company owned or controlled, wholly or partly, by the CG/ SG or the Government of a UT/ LA]

II. BY DETENTION AND SALE OF GOODS

The PO may recover (or may require any other specified officer to recover) the amount so payable by **detaining and selling any goods** belonging to such person which are under the control of the PO or such other specified officer;

III. FROM THIRD PERSON

The PO may issue a **notice** in FORM GST DRC-13 to any **third person**,-

- from whom money is due (or may become due) to assessee, or
- who holds (or may subsequently hold) money for or on account of assessee,

to **pay** to the Government such money, upto the amount due from the assessee, either forthwith [upon the money becoming due or being held], or within the time specified in the notice [not being before the money becomes due or is held].

IV. By Attachment and Sale of Property

The PO may, in accordance with the rules to be made in this behalf, **distrain** any movable or immovable **property** belonging to or under the control of assessee, and detain the same until the amount payable is paid. In case, any part (of the said amount payable) or (of the cost of the distress or keeping of the property), **remains unpaid** for a period of 30 days next after any such distress, may cause the said property to be **sold** and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to assessee.

V. THROUGH COLLECTOR

The PO shall send a **certificate** to the Collector/ Deputy Commissioner of the district in which assessee owns any property or resides or carries on his business, or any other officer authorised in this behalf in FORM GST DRC-18 specifying the amount due from assessee, and the said Collector (or the said officer), on receipt of such certificate, shall proceed to recover from assessee, the amount specified thereunder as if it were an **arrear of land revenue**.

VI. THROUGH MAGISTRATE

The PO may file an **application** to the appropriate **Magistrate** in FORM GST DRC- 19 and such Magistrate shall proceed to recover from assessee, the amount specified thereunder as if it were a **fine imposed** by him. (Notwithstanding anything contained in the Code of Criminal Procedure, 1973)

RECOVERY FROM THIRD PERSON – DETAILED PROCEDURE

1. Every person to whom such a notice is issued shall be **bound to comply** with it, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
2. In case the person to whom a notice has been issued, **fails** to make the payment, he shall be deemed to be a defaulter in respect of the amount and all the consequences of this Act or the rules made thereunder shall follow.
3. The officer issuing a notice may, at any time, **amend or revoke** such notice **or extend** the time for making any payment in pursuance of the notice.
4. Any person making any payment in compliance with a notice shall be deemed to have made the payment, under the **authority of the assessee**, and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the assessee, to the extent of the amount specified in the receipt. The PO shall issue a **certificate** in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.
5. Any person discharging any liability to the assessee, after service on him of the notice, shall be **personally liable** to the Government (to the extent of the liability discharged) or (to the extent of the liability of the assessee for tax + interest + penalty), whichever is less.
6. Where a person on whom a notice is served, **proves** to the satisfaction of the officer issuing the notice that, as at the time of service of the notice, the **money** demanded or any part thereof was **not due**, & not likely to become due to the assessee; or that he **did not hold** any money for or on account of the assessee; & not likely to be held so, he shall not be required to pay to the Government any such money.

STEP	SALE OF GOODS UNDER THE CONTROL OF PO	SALE OF MOVABLE OR IMMOVABLE PROPERTY
I	The PO shall <u>prepare an</u> inventory of the goods and estimate the <u>market value</u> of such goods and <u>proceed</u> to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.	The PO shall <u>prepare</u> a list of properties belonging to the defaulter, estimate their value as per the prevalent <u>market price</u> and issue an <u>order of attachment/</u> distraint and a notice for sale in <u>FORM GST DRC- 16</u> , prohibiting any transaction - with regard to such movable and immovable property as may be required for the recovery of the amount due. (Separate rule for attachment of debt, shares, and movable property not in possession of defaulter)
II	The said goods/ property attached or distrained shall be sold through a process of auction, including e-auction, for which a notice shall be issued in <u>FORM GST DRC-10</u> (Goods)/ <u>FORM GST DRC- 17</u> (Property) clearly indicating the goods/ property to be sold and the purpose of sale.	
III	The last day for <u>submission of bid</u> or the date of auction shall <u>not be earlier than 15 days from</u> the date of issue of the <u>notice</u> . (Where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the PO may sell them forthwith)	
IV	The PO may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be <u>returned</u> to the <u>unsuccessful bidders</u> , and <u>forfeited</u> in case the <u>successful bidder fails</u> to make the <u>payment</u> of the full amount, as the case may be.	
V	The PO shall issue a notice to the successful bidder in <u>FORM GST DRC-11</u> requiring him to make the <u>payment within</u> a period of <u>15 days</u> from the date of auction. <u>On payment</u> of the full bid amount, the PO shall transfer the possession of goods/ rights, title and interest in the property to the successful bidder and issue a certificate in <u>FORM GST DRC-12</u> .	

DETAILED PROCEDURE FOR SALE OF GOODS AND PROPERTY

DISPOSAL OF PROCEEDS OF SALE OF GOODS AND MOVABLE OR IMMOVABLE PROPERTY

The amounts realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-

- a) first, be appropriated against the administrative cost of the recovery process;
- b) next, be appropriated against the amount to be recovered;
- c) next, be appropriated against any other amount due from the defaulter under the CGST Act, the IGST Act, the UTGST Act, any SGST Act, and the rules made thereunder; and
- d) any balance, be paid to the defaulter.

Where the defaulter (assessee who owned goods/ property) pays the amount under recovery, including expenses incurred on the process of recovery, before the issue of the notice of auction, the PO shall cancel the process of auction and release the goods.

Where no bid is received or the auction is considered to be non-competitive [due to lack of adequate participation (less bidders) or due to low bids (amounts of bid low)], the PO shall cancel the process and proceed for re-auction.

OBJECTION IN CASE OF PROPERTY

- ❖ Where any **claim** is preferred or any **objection** is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the **PO** shall **investigate** the claim or objection and may postpone the sale for such time as he may deem fit.
- ❖ The person making the claim or objection **must adduce evidence** to show that on the date of the order issued, he had some interest in, or was in possession of, the property in question under attachment or distraint.
- ❖ Where, upon investigation, the **PO** is **satisfied** that, on the said date, for the reason stated in the claim or objection -
 - Such property was not in the possession of the defaulter or of any other person on his behalf or
 - It was in the possession of the defaulter on the said date, but not on his own account or as his own property, rather on account of or in trust for any other person (or partly on his own account and partly on account of some other person)
- ❖ Then the PO shall make an order **releasing** the property, wholly or to such extent as he thinks fit, from attachment/ distraint.
- ❖ Where the PO is **satisfied** that the property was, on the said date, in the **possession** of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the PO shall **reject** the claim and **proceed** with the process of sale through **auction**.

ADDITIONAL PROCEDURES IN CASE OF PROPERTY

1. The PO shall **send a copy** of the order of attachment/ distraint of property to the concerned Revenue Authority (In case of immovable property) or Transport Authority (In case of motor vehicles) or any other Authority (In case of others), to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the PO to that effect.
2. Where the property subject to the attachment or distraint is-
 - a) an **immovable** property → the **order** of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;
 - b) a **movable** property → the PO shall **seize** the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the PO himself or an officer authorised by him.
3. Where the highest bid is made by **more than one person**, and one of them is a **co-owner** of the property, he shall be deemed to be the successful bidder.

PROHIBITION AGAINST BIDDING OR PURCHASE BY OFFICER

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

PROHIBITION AGAINST SALE ON HOLIDAYS

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

RECOVERY THROUGH EXECUTION OF A DECREE, ETC.

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the PO shall send a request in FORM GST DRC- 15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

IN CASE OF NEGOTIABLE INSTRUMENTS OR SHARES

NWA, where the property to be sold is a negotiable instrument or a share in a corporation, the PO may, **instead of** selling it by public **auction, sell** such instrument or a share **through a broker** and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

RECOVERY – OTHER POINTS

- Where the terms of any **bond** or **other instrument** executed provide that any amount due may be recovered in the manner laid down above (all 6 methods), the amount may, without prejudice to any other mode of recovery, be so recovered.
- Where **PO of SGST/ UTGST** is doing recovery, and any amount of tax, interest or penalty is unpaid under this Act or the rules (means CGST is unpaid), then he may recover the CGST amount also from the assessee, as if it were an arrear of SGST/ UTGST and credit the amount so recovered to the account of the (Central) Government. Where the amount so recovered is **less** than the total amount due to the Central Government and State Government, the amount shall be proportionately distributed in ratio of amount due to each Government.
- Where the recovery is from a company under **liquidation**, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.
- Where any person has become **surety** for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

SECTION 80: PAYMENT IN INSTALMENTS

- On an application filed by a taxable person in FORM GST DRC- 20, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- After considering the request and the report, he may issue an **order** in FORM GST DRC- 21, -
 - I. Extending the time** for payment or
 - II. Allow payment** of any amount due (other than the amount due as per the liability self-assessed in any return), by such person in monthly instalments not exceeding 24, subject to payment of interest u/s 50.
- Where there is **default** in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.
- The facility referred shall **not be allowed** where-
 - a) The taxable person has already defaulted on the payment of any amount under this act/ IGST act/ UTGST act/ any SGST act, for which the recovery process is on.
 - b) The taxable person has not been allowed to make payment in instalments in the preceding FY under this act/ IGST act/ UTGST act/ any SGST act.
 - c) The amount for which instalment facility is sought is less than Rs. 25,000.

SECTION 81, 82, 83: PROPERTY

SECTION 83: PROVISIONAL ATTACHMENT

- Where during the pendency of any proceedings u/s 62/ 63/ 64/ 67/ 73/ 74, the Commissioner is of the opinion that it is necessary for the purpose of protecting the interest of the Government revenue, he may **attach provisionally** any property, including bank account, belonging to the taxable person, by order in FORM GST DRC-22.
- He shall send a copy of order to Revenue Authority/ Transport Authority/ any other, to place encumbrance on property, which shall be removed only with written permission of the Commissioner.
- Any person whose property is attached may file an objection to the effect that the property attached was or is not liable to attachment, within 7 days of the attachment. The Commissioner shall afford an opportunity of being heard.
- The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, **release** such property by issuing an order in FORM GST DRC-23.
- Where the property attached is of perishable or hazardous nature, -
 - I. If the taxable person pays an amount = the lower of (the market price of such property) or (the amount that is or may become payable by the taxable person), then → such property shall be **released** forthwith, by an order in FORM GST DRC-23, on proof of payment.
 - II. If fails to pay the amount, then the commissioner may **dispose** of the property and amount realized adjusted against dues.
- Every such provisional attachment shall **cease** to have effect after the expiry of a period of 1 year from the date of the order.

SEC 81: TRANSFER VOID

- Where a person (creates a **charge** on) or (**parts** with) the **property** belonging to him/ in his possession, after any amount has become due from him, by way of sale, mortgage, exchange, or any other mode of transfer whatsoever, in favour of any other person, with the intention of defrauding the Government revenue, such charge or transfer shall be **void** as against any claim in respect of any tax or any other sum payable by the said person.
- Such charge or transfer **shall not be void**, if it is made –
 - I. For adequate consideration, and
 - II. In good faith and
 - III. [Without notice of (the pendency of such proceedings) or (such tax/ other sum payable by the assessee)], or [with the previous permission of the PO].

SECTION 82: FIRST CHARGE

NWA, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by any person on account of tax, interest or penalty, shall be a **first charge** on his property.

ATTACHMENT OF INTEREST IN PARTNERSHIP

Where property to be attached belongs to a partnership firm, and the defaulting assessee is one of the partners, the PO may –

- Make an order – ‘**charging**’ only the share of such partner in the property and ‘profits’ – with payment of the amount due under the certificate.
- **Appoint a receiver** of the share of such partner in the - profits (whether already declared or accruing) & any other money which may become due to him in respect of the partnership (by the same or subsequent order).
- Direct **accounts** and **enquiries** and
- Make an order for the **sale** of such interest or
- Make **such other order** as the circumstances of the case may require.
 - The other partners may **redeem** the interest (in partnership) charged or to **purchase** the property being sold.

ATTACHMENT OF PROPERTY IN CUSTODY OF COURTS OR PUBLIC OFFICER

Where the property to be attached is in the custody of any court or Public Officer, the PO shall send the order of attachment to such court/ officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

ATTACHMENT OF DEBTS AND SHARES, ETC

- A **debt** (not secured by a negotiable instrument), a **share** in a corporation, or other **movable property** not in the possession of the defaulter [except for property deposited in, or in the custody of any court] shall be attached by a written order in FORM GST DRC-16 prohibiting -
 - a) In the case of a **debt**, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the PO.
 - b) In the case of a **share**, the (person in whose name the share is standing) from transferring the same or receiving any dividend thereon.
 - c) In the case of any other **movable property**, the person in possession from giving it to the defaulter.
- A **copy** of such order shall be **affixed** on some conspicuous part of the office of the PO, and another copy shall be **sent**, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.
- A **debtor**, so prohibited, may pay the amount of his debt to the PO, and such payment shall be deemed as paid to the defaulter.

SECTION 84: CONTINUATION & VALIDATION OF RECOVERY

- Where any notice of demand in respect of – any tax, penalty, interest or any other amount (“Government dues”), is **served** upon any taxable person or any other person **and** any **appeal** or **revision** application is **filed** or any other proceedings is initiated in respect of such Government dues, then—
 - a) where such Government dues are **enhanced**, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings under previous notice of demand may be continued from the stage at which such proceedings stood immediately before such appeal/ revision/ proceedings, without the service of any fresh notice of demand.
 - b) where such Government dues are **reduced** in such appeal, revision or in other proceedings—
 - i. it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;
 - ii. the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
 - iii. any recovery proceedings initiated on the basis of the earlier demand may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

The order for the reduction or enhancement of the demand, as the case may be, shall be issued in FORM GST DRC- 25.

ASSISTANCE BY POLICE (RULE 150)

The PO may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

End of Presentation

WHAT WE LEARNED -

Section 73 & 74: 'Tax not paid' - other than 'fraud' and by 'fraud'

Section 75 – Determination of Tax – General Provisions

Proceedings

Section 76: Tax Collected but not paid

Section 77: Tax Wrongfully Collected and Paid (Inter-Intra Confusion)

Section 78 & 79: Recovery

- I. By Deduction
- II. By Detention and Sale of Goods
- III. From Third Person
- IV. By Attachment and Sale of Property
- V. Through Collector
- VI. Through Magistrate

Detailed Recovery Procedures

Some Additional Procedures in case of Property

In Case of Negotiable Instruments or Shares

Objection in case of property

Recovery through execution of a decree, etc.

Disposal of proceeds of sale of goods and movable or immovable property

Prohibition against bidding or purchase by officer

Prohibition against sale on holidays

Section 80: Payment in Instalments

Section 81, 82, 83: Property

Sec 81: Transfer Void

Section 82: First Charge

Section 83: Provisional Attachment

Attachment of interest in partnership

Attachment of debts and shares, etc

Attachment of property in custody of courts or Public Officer

Section 84: Continuation & Validation of recovery

Assistance by police (Rule 150)

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