

E-book on Recovery of Arrears under GST Law

About the e-book

In this e-book, efforts have been made to explain the recovery provisions under GST law. This e-book contains 7 Chapters. The content under each chapter have been arranged logically and sequentially keeping in mind the requirement of users of this e-book.

For convenience of departmental officers, efforts have been made to refer to the relevant legal provisions of the CGST Act, 2017 and rules framed thereunder wherever required.

Efforts have been made to keep this document error free. However, error might have crept into this document. For any legal purpose, please refer to official text of legal provision. This compilation has been prepared for the purpose of capacity building purpose and is not meant for any commercial use.

2. The Chapter Number and their heading are as given below:-

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Chapter 1: Introduction to Recovery Proceedings under GST Laws

Chapter 1: Introduction to Recovery Proceedings under GST Laws

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1.1 Background

Disputes are common in any law, and tax law is no exception. Issuance of Demand notice, adjudication of notice, and recovery of demand confirmed are key processes in any case of tax dispute settlement. Tax dispute may arise between tax department and taxpayer due to various reasons such as difference in interpretation of legal provision, non-compliance of tax law due to ignorance of law, or intentional tax evasion by dis-honest or unscrupulous taxpayer etc.

1.2: Principles of Natural Justice-an Essence of Dispute Settlement Process

For demand of any tax amount from taxpayer which has not been paid, short paid, erroneously refunded or ITC wrongly availed or utilized, the tax officer is required to follow the principles of natural justice- first by informing the taxpayer the grounds which has resulted in demand of tax/interest or imposition of penalty by way of issuance of notice /statement; and second-by giving the taxpayer an opportunity to explain his side before any order is passed by the adjudicating authority. The order passed by the tax authority is required to be speaking or reasoned order-containing facts of the case, discussing relevant legal provisions and explaining the reasons of conclusion arrived at. Thus, to follow the principles of natural justice and issuance of speaking order, are the basic essential elements of any tax dispute settlement process.

1.3: Legal Provisions for Demand of Tax.

While Chapter XV of the CGST Act, 2017 deals with the subject of “**demand and recovery of tax**”, the basic provisions for demand of taxes are contained in sections 73 to 77 of the CGST Act, 2017. Once the adjudication Order has been issued by the adjudicating authority, then amount of tax confirmed in the order along with interest and/or penalty imposed becomes due for recovery from the taxpayer. Sometimes, confirmed demand may also be in the form of fine, late fee etc. The recovery provisions under GST laws are contained in Sections 78 to 83 of the CGST Act, 2017. For learning more about the details of legal provisions and procedures for demand proceedings under the GST law, the module on “**issuance of Demand Cum Show Notices**” may be referred.

1.4: Difference between Demand and Recovery

In case of dispute over payment of tax as per law by the taxpayer, GST laws envisages issuance of notice/statement. Any amount mentioned in the notice/ statement *per se* does not become recoverable on issuance of notice /statement. It is only the first step and is a formal communication to the taxpayer to pay tax or other amount mentioned in the notice/statement. Tax payer may agree or dis-agree with the tax amount mentioned and demanded in the notice or statement. If the taxpayer agrees and pays the tax amount/interest/penalty/late fee/fine etc., then dispute ends. However, if the tax payer does not agree with the demand of tax/interest/penalty/fine/ late fee etc. as mentioned in notice/statement, then the same need to be adjudicated by the competent adjudicating authority by passing speaking or reasoned order. After issuance of adjudication order, the demand confirmed become due for recovery from the noticee.

1.5: What is Arrear?

In the process of adjudication, the demand may be confirmed fully or partially or dropped. On confirmation of demand by way of issuance of Order after adjudication proceedings, it become arrears and thereby, become recoverable from the taxpayer. If it is paid by taxpayer, then the dispute culminate. However, in case, it is not paid by the taxpayer, then various tools prescribed in GST law has to be used to recover the same from taxpayer or other person concerned. Dues to be recovered may be in the form of Central Tax, State Tax, Integrated tax, Compensation Cess, Interest, Penalty, late fee or fine etc.

In other words, arrears are the overdue payment of the amount of tax, cess, interest, fine, late fee or penalty that is confirmed against a person who is liable to pay the same to the exchequer. It arises as a result of Order-in-Original, Order of Appellate authority, appellate Tribunal and the Courts of law (HC/SC).

1.6 What is not Arrear?

It may be kept in mind that in following situations, the amount do not qualify to be called “arrears”:

- The amount involved in the case under process of investigation,

- Unconfirmed demands (i.e. Show Cause Notice, including those lying in Call Book),
- The Order-in-Original that has been set aside or remanded for de-novo adjudication by Appellate authority.

1.7 Categories of Arrears

In the department, arrears are traditionally categorized in the following categories:

- (i) Arrear in Litigation/Appeal: where the confirmed demand is under appeal or litigation before any appellate authorities, namely, Supreme Court/High Court/Appellate Tribunal /Commissioner (Appeals)
- (ii) Restrained Arrear: Taxpayer against whom financial/operational creditors has initiated insolvency or bankruptcy proceeding before NCLT/DRT under Insolvency and Bankruptcy Code, 2016 (in Short IBC, 2016);
- (iii) Arrear where appeal period is not yet over.
- (iv) Recoverable arrear other than those covered from (i) to (iii) above.

1.8: Arrears under Litigation/Appeal

Under GST Law, any order passed against taxpayer or any other person by adjudicating authority can be challenged by the aggrieved person by way of filing appeal before the appellate authority. The GST law envisages four appellate authorities namely Appellate Authority, Appellate Tribunal, High Court and Supreme Court.

During the pendency of appeal of the taxpayer before any appellate authority, the amount confirmed by the adjudicating authority remained an arrear under litigation/appeal and recovery is governed by the provisions of the law. It becomes recoverable arrear if appeal period is over and no appeal has been filed by the taxpayer against adverse order passed by Adjudicating authority or any appellate authority.

The process of settlement of dispute and when arrears become restrained arrear or recoverable arrears has been explained in greater details in the following paragraphs.

If any demand proceedings have attained finality either on account of no appeal having been filed against OIO or on account of litigation process being finally over or attained finality on account of taxpayer having exhausted all appellate remedies available under law, then such confirmed demand becomes recoverable arrears and has to be recovered by taking recourse to the various tools provided in the GST law.

1.9: Issuance of Order in Original (OIO) by Adjudicating Authority.

After issuance of notice/ statement under Section 73 or section 74, as the case may be, the same is required to be adjudicated by passing speaking order after following the principles of natural justice. In case, the tax demand is confirmed by the Adjudicating authority, then the taxpayer, who is aggrieved by the Order passed by the Adjudicating authority has right to appeal before the appellate authority under Section 107 of the CGST Act, 2017.

The term “Appellate Authority” has been defined under section 2(8) of the CGST Act, 2017 and it means an authority appointed or authorised to hear appeals as referred to in section 107.

Vide notification No. 2/2017-Central Tax, dated 19.06.2017 (w.e.f. 01.07.2017), the Central Government has appointed or authorised the Commissioner (Appeals) and Additional/Joint Commissioner (appeals) before whom the appeal shall lie under section 107 of the CGST Act, 2017. Similar notifications/orders have been issued by each of the State Government /Union Territory under respective State GST Act, 2017.

1.10: Appeal against OIO before Appellate Authority

Under section 107 of the CGST Act, 2017, any person aggrieved by any decision or order passed under this Act or the SGST Act or the UTGST Act by an adjudicating authority may file an appeal before Appellate Authority within

three months from the date on which the said decision or order is communicated to such person.

It may be noted here that both Department as well as taxpayer (including any other person aggrieved by OIO) has right to make appeal before Appellate Authority.

1.11: No Appeal before Appellate Authority without Pre-deposit

As per provisions of section 107(6), no appeal shall be filed before Appellate authority under sub-section 107 (1), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

[Note: The ceiling of Rs. 25 crores for filing appeal before Appellate Authority have been incorporated in the CGST Act, 2017 *vide* section 25 of the CGST (Amendment) Act, 2018 (No. 31 of 2018) w.e.f. 01.02.2019]

1.12: Deemed Stay against recovery of Balance Amount (on filing appeal with pre-deposit).

As per provision of sub-section (7) of Section 107, where the appellant has paid the amount under section 107(6), the recovery proceedings for the balance amount shall be deemed to be stayed.

1.13: Appeal Against Order in Appeal (OIA) before Appellate Tribunal

If any person or department is aggrieved by the Order passed by the Appellate Authority, then it have right to make further appeal to Appellate Tribunal under Section 112 of the CGST Act, 2017.

As per section 112(1) of the CGST Act, 2017, any person aggrieved by an order passed against him under section 107 or section 108 of the CGST Act or the SGST Act or the UTGST Act may file an appeal before the Appellate Tribunal against such order within three months from the date on which the order sought

to be appealed against is communicated to the person preferring the appeal. In terms of provision of section 112(4), the authorised officer, on behalf of department, can make any application to the Appellate Tribunal on the direction issued to him under provision of section 112(3).

1.14: No appeal before Appellate Tribunal without Pre-deposit

As per provision of section 112(8) of the CGST Act, 2017, no appeal shall be filed before Appellate Tribunal unless the appellant has paid–

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.

Note: If appeal is preferred by the Department before Tribunal against the Order Passed by Appellate Authority, no pre-deposit is required to be made.

[Note: The ceiling of Rs. 50 crores on the pre-deposit to be made by taxpayer for filing appeal before GST Tribunal have been incorporated in the CGST Act, 2017 *vide* section 26 of the CGST (Amendment) Act, 2018 (No. 31 of 2018) w.e.f. 01.02.2019]

It may be noted that presently, the Government has decided to set up GST Tribunals *vide* notification SO 4073(E), dated 14.09.2023 issued by the Department of Revenue in the Ministry of Finance. The Tribunals are likely to be fully in place soon. Till such time, an option to file appeal before Tribunal against the order passed by the Appellate Authority is not available to the Tax payer or the department.

It may be noted that *vide* Circular No. 132/2/2020-GST, dated 18.03.2020, issued under section 168 (1) of the CGST Act, 2017, the Government has issued Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal.

“ *The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and*

therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.”

1.15: Deemed Stay against Recovery of Balance Amount (in case of appeal before GST Tribunal with pre-deposit).

As per provision of section 112(9) of the CGST Act, 2017, where the appellant has paid the amount as per sub-section 112(8) while filing appeal before Appellate Tribunal, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

1.16: Appeal before High Court and Supreme Court.

In the GST law, provision has been incorporated where appeal against the Order passed by the Appellate Tribunal can be filed before Hon’ble High Court under section 117(1) of the CGST Act, 2017 if the case involves substantial question of law. Similarly, against Order passed by the High Court, Appeal can be filed before Hon’ble Supreme Court under section 118 of the CGST Act, 2017.

1.17: Sum due to be paid fully in case of appeal before High Court/Supreme Court.

As per section 119 of the CGST Act, 2017, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

1.18: Restrained arrears: Recovery of Arrear in case of Initiation of Insolvency or Bankruptcy proceedings before NCLT under Insolvency and Bankruptcy Code, 2016 (IBC, 2016)

There could also be cases where proceedings have been initiated by financial or operational creditors against the taxpayer or defaulter person from whom GST arrears are also due for recovery, in case of companies before National Company Law Tribunal or in case of individual or partnership firms before Debt recovery Tribunal (DRT) under Insolvency and Bankruptcy Code, 2016.

As soon as the case is admitted before NCLT/DRT, the provision of IBC Code, 2016 becomes applicable. The provision of Insolvency and Bankruptcy Code has overriding effect over the provision of GST Laws. In case of conflict between the provision of Insolvency and Bankruptcy Code and CGST Act, 2017, the provision of former will prevail. Therefore, any action for recovery, where the proceedings have already been initiated by financial /operational creditors against the defaulter before NCLT, has to be considered in the light of provision of IBC, 2016.

In this regard, CBIC has also issued two Circular bearing No. 134/04/2020-GST dated 23rd March, 2020 and Circular No. 187/19/2022-GST, dated 27.12.2022. For clarity, these Circulars may also be carefully studied.

Vide Circular No.134/04/2020-GST dated 23rd March, 2020, it has been clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

The CBIC also examined the issue of the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “IBC”) with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC. While clarifying this question, the CBIC vide Circular No. 187/19/2022-GST, dated 27.12.2022 clarified as under:-

As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word ‘other proceedings’ is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of CGST Act.

Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such

demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending. 6. It is requested that suit

To know the course of action to be taken in cases where liquidation proceedings are in progress before NCLT, the e-learning module on NCLT/IBC may be referred to.

Chapter 2: Legal and Administrative frame work for recovery of Dues.

Heading No.	Subject in Brief
2.1	Introduction
2.2	Recovery Provisions in the CGST Act, 2017 and the CGST Rules, 2017 (Ref: Sections 78 to 83 of CGST Act, 2017 and Rules 142 to 161 of CGST Rules, 2017)
2.3	Recovery Provisions in the IGST Act, 2017
2.4	Recovery Provisions in the GST (compensation to States) Act, 2017
2.5	Recovery Provisions in the State GST Act, 2017 and UTGST Act, 2017
2.6	Various Modes of Recovery of Arrears
2.7	Hierarchical Approach Not to be followed while applying various modes of recovery
2.8	Proper Officer in respect of recovery of GST Arrears.

2.1. Introduction

The CGST Act, 2017 read with CGST Rules, 2017 contains extensive legal framework to recover dues which has become due for recovery and are not restrained on account of any legal proceedings/liquidation proceeding before NCLT.

No independent legal frame work for recovery of dues has been provided under IGST Act which provides for levy of integrated tax on inter-state supply of goods and services. Under **Section 20 of the IGST Act, 2017**, relevant Sections of CGST Act and CGST Rules have been made applicable to recovery under IGST Act. Thus, the recovery proceedings under IGST Act are also made under the relevant provisions of CGST Act, as has been made applicable to the IGST Act.

Similar is the position with regard to recovery of dues under the GST (Compensation to States) Act, 2017 which provides for levy to compensation cess on inter-state or intra-state supplies of certain specified commodities. *Vide section 11 of the GST (Compensation to States) Act, 2017*, the provisions of CGST Act, 2017

and the CGST Rules, 2017 has also been made applicable for recovery of dues under the GST (Compensation to States) Act, 2017.

2.2: Relevant Recovery Provisions under CGST Act, 2017 and the CGST Rules, 2017

Statutory provisions providing for recovery of arrears of Central Tax are contained in **Sections 78 to 83 of the CGST Act, 2017** and **Rules 142 to 161 of the CGST Rules, 2017**. These legal provisions of recovery contained in the CGST Act, 2017 can broadly be divided in the following three parts:

- I. When the recovery proceeding can be started by tax officer (Section 78)
- II. The various modes (How) of the recovery of arrears (Section 79).
- III. Protective measures to safeguard the interest of Revenue (Section 80 to 83).

The GST Rules, 2017 (Rules 142 to 161) lays down detailed procedures which are required to be followed by tax officer while effecting recovering arrears of GST. The CGST Rules, 2017 also provides prescribed online forms (from **FORM GST DRC-7** to **FORM GST DRC-25**) meant for formal communication with taxpayer or other persons in respect of recovery proceedings.

2.3 Recovery Provisions in the IGST Act:

There are no independent provisions for recovery of tax dues of IGST, interest thereon and penalties. **Section 20 of the IGST Act, 2017** *inter alia* provides for applicability of the provisions of CGST Act, 2017 relating to demands and recovery, offences and penalties, other miscellaneous provisions including the provisions relating to the imposition of interest and penalty. Thus, the recovery of dues under IGST Act can be made under the relevant provisions of CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and the CGST Rules, 2017.

2.4: Recovery Provisions in the GST (Compensation to States) Act, 2017

For recovery to dues under GST (compensation to States) Act, 2017, **section 11 of the GST (Compensation to States) Act, 2017** provides for applicability of the provision of CGST, 2017 to intra-state supplies and for applicability of the provision of IGST Act, 2017 to inter-state supplies.

The **section 11 (1) of the GST (Compensation to States) Act, 2017** provides that the provisions of the CGST Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder.

Similarly, **the section 11(2) of the GST (Compensation to States) Act, 2017** provides that the provisions of the IGST Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder.

2.5: Recovery Provisions in the State GST, 2017 and UTGST Act, 2017

Identical provisions as that of CGST Act, 2017 and the CGST Rules, 2017 have been incorporated under State GST Act enacted by each of the state providing for levy of State GST on intra-state supplies of goods and Services. Further, on identical lines of CGST Rules, 2017, the State GST Rules, 2017 have been framed by each of the state. To know more details of legal provisions applicable to recovery of arrears under the State GST Act and State GST Rules, the relevant State GST Act and Rules may be referred to .

Under UTGST Acts, 2017 which provides levy of UTGST on intra-state supplies of goods and services, vide **section 21 of the UTGST, 2017**, the provision of the CGST Act, 2017 has been made applicable to the recovery of dues under UTGST Act, 2017.

2.6: Various Modes of Recovery of Arrears

The **Section 79(1) of the CGST Act, 2017** lays down various modes of recovery of tax or any amount due. It provides that where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder

is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes:-

- Recovery by Deduction from any money owed which may be under control of proper officer or specified officer.
- Recovery by detain and sale of goods belonging to such persons which are under the control of proper officer or such other specified officer.
- Recovery from third person.
- Recovery through execution of a decree.
- Recovery through sale of movable or immovable property.
 - Attachment of debt and shares, etc.
 - Attachment of property in custody of courts or public officer
 - Attachment of interest in partnership
- Recovery through land revenue authority.
- Recovery through court.
- Recovery through surety.

Legal provisions pertaining to each mode of recovery and procedure to be followed have been explained in details in **Chapter 3** of this e-book and the same may be referred to for greater understanding.

2.7: Hierarchical Approach Not to be followed while applying various modes of recovery

The GST law provides for several modes of recovery of dues. Each method of recovery has its' advantage and dis-advantages over others. A decision to apply one or more mode of recovery has to be taken by the proper officer after carefully examining the facts of the case and option available before him. There is no requirement to apply the various mode of recovery in sequential manner or any particular manner.

2.8: Proper Officer in respect of Recovery of GST arrears

In the GST law, the term “**proper officer**” is frequently used. Therefore, it is essential to know what this term means? and officer of which rank is empowered to take action under that legal provision. The Proper officer may be of different rank under different provisions of the CGST Act, 2017 or the CGST Rules, 2017

As per definition provided under clause (91) of section 2 of the CGST Act, 2017, the “proper officer” in relation to any function to be performed under the CGST Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board. Accordingly, the Commissioner in the Board has issued Circular No. 3/3/2017-GST, dated 05.07.2017 which has been subsequently amended *vide* Circular No. 31/05/2018-GST, dated 09.02.2018 and again *vide* Circular No. 169/01/2022-GST, dated 12.03.2022.

As per the Circulars issued by the Board, in respect of recovery of tax or other dues, the officers of different ranks have been assigned function of proper officer under Sections 77 to 84 of the CGST Act, 2017 and Rules 142 to 161 of the CGST Rules, 2017, as per details given in Table I below:-

Table I

Section/ Rule	Subject Heading	Rank/ designation of Proper Officer
Section 78	Initiation of Recovery Proceedings (for Proviso to section 78)	Commissioner
Section 79	Recovery of Tax	Deputy or Assistant Commissioner
Section 80	Payment of tax and amount in instalment	Commissioner
Section 81	Transfer of property to be void in certain cases (for Proviso to section 81)	Additional or Joint Commissioner
Section 83	Provisional attachment to protect revenue in certain cases	Commissioner
Section 84	Continuation and Validation of Certain Recovery Proceedings	Commissioner
Rule 142	Notice and Order for demand of amounts payable under the Act (for Sub-rule (1), (2), (3) and (7))	Superintendent of Central Tax
Rule 143	Recovery by deduction from any money owed	Deputy or Assistant Commissioner
Rule 144	Recovery by sale of goods under the control of proper officer (for Sub-rules (1), (3), (4), (5), (6) and (7))	Deputy or Assistant Commissioner
Rule 145	Recovery from a third person (for Sub-rules (1) and (2) of Rule 145	Deputy or Assistant Commissioner
Rule 146	Recovery through execution of a decree	Deputy/ Assistant Commissioner

Rule 147	Recovery by sale of moveable or immovable property (for Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15))	Deputy or Assistant Commissioner
Rule 150	Assistance by Police	Superintendent of Central Tax.
Rule 151	Attachment of debt and shares, etc. (for Sub-rules(1),(2) and (3))	Deputy or Assistant Commissioner
Rule 152	Attachment of property in custody of courts or Public Officer	Deputy or Assistant Commissioner
Rule 153	Attachment of interest in partnership	Deputy or Assistant Commissioner
Rule 155	Recovery through land revenue authority	Deputy or Assistant Commissioner
Rule 156	Recovery through court	Deputy or Assistant Commissioner
Rule 158	Payment of tax and other amounts in instalment	Commissioner
Rule 159	Provisional attachment of Property	Commissioner
Rule 160	Recovery from company in liquidation	Commissioner

Chapter 3: Recovery of Arrears- Process there of

Heading No.	Subject in Brief
3.1	Introduction
3.2	Pre-Recovery Processes and Applicable DRC Forms thereof
3.3	Initiation of recovery proceedings (Ref: Section 78 of the CGST Act).
3.3.1	When Recovery proceedings to be initiated (Ref: Section 78 of the CGST Act.)
3.3.2	Initiation of Recovery Proceedings even before expiry of 3 months from date of Service of Order (Ref: Proviso to Section 78 of the CGST Act).
3.3.3	Uploading of Summary of Order of Confirmed Demand (Ref: Rule 142(5) of the CGST Rules).
3.3.4	DRC-7 to be treated as Notice for Recovery (Ref: Rule 142(6) of the CGST Rules).
3.3.5	Uploading of Rectification Order in DRC-08 (Ref: Rule 142(7) of CGST Rules).
3.3.6	Self-Assessed Tax and Recovery thereof (Ref: Section 75(12) of the CGST Act).
3.3.7	Procedure to be adopted in case of self-assessed tax not paid before initiating action under Section 79 (Ref: Instruction No. 1/2022-GST, dated 7.1.2022).
3.3.8	Manner of dealing with difference in liability reported in statement of outward supplies and that reported in Return (Ref: Rule 88C of the CGST Rules, 2017)
3.3.9	Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return (Ref: Rule 88D of the CGST Rules, 2017)
3.4	Intimation of certain amounts liable to be recovered under section 79 of the Act (Ref: Rule 142B of the CGST Rules, 2017)
3.5	Recovery of Tax (Ref: Section 79 of the CGST Act)
3.5.1	Modes of Recovery of Amount Due (Ref: Section 79(1) of the CGST Act)
3.5.2	Recovery by deduction by proper officer or specified officer from any money owed (Ref: Section 79(1) (clause a) of CGST Act).
3.5.2.1	Procedure of Recovery by deduction from any money owed (Ref: Rule 143 of the CGST Rules).
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3.5.3.6	Issuance of Notice in FORM GST DRC-11 to Successful Bidder (<i>Ref: Rule 144(5) of the CGST Rules</i>).
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3.5.4.	Recovery from third person (<i>Ref: Section 79(1) (clause (c) of the CGST Act</i>).
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3.5.4.8	Discharge of liability to the person in default after issuance of notice-consequence thereof to the third person (Ref: Section 79 (1) (clause c) (sub-clause (vi) of CGST Act).
3.5.4.9	Action in case of satisfactory Explanation by Third person proving no liability to pay to person in default (Ref: Section 79 (1) (clause c) (sub-clause (vii) of CGST Act).
3.5.4.10	Recovery through Execution of a decree, etc ((Ref: Rule 146 of the CGST Rules).
3.5.5	Recovery by Sale of movable or immovable property (Ref: Section 79(1) (clause (d) of the CGST Act).
3.5.5.1.	Procedure for Recovery by sale of movable or immovable property (Ref: Rule 147 of the CGST Rules).
3.5.5.2	Preparation of List of Movable and Immovable Property of defaulter and Issuance of Order of Attachment or Distraint and Notice for Sale in FORM GST DRC-16 (Ref: Rule 147 (1) of the CGST Rules).
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3.5.6	Recovery through land revenue authority (Ref: Section 79(1) (clause e) of the CGST Act).
3.5.6.1	Procedure for Recovery through Land Revenue Authority (Ref: Rule 155 of the CGST Rules).
3.5.7	Recovery through Court (Ref: Section 79(1) (clause f) of the CGST Act).
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3.6	Recovery of CGST Dues by Proper Officer of State Tax or Union Territory Tax (Ref: Section 79(3) of the CGST Act).
3.7	Equal Distribution of Amount between Central Government and State Government When Amount recovered is less than amount due (Ref: Section 79(4) of the CGST Act).
3.8	Meaning of Word “Person” for purpose of Section 79 of the CGST Act, 2017 (Ref: Explanation to Section 79 of the CGST Act).

3.1 Introduction:

In this Chapter, various modes of recovery of dues provided in the GST law and procedures to be followed by tax-officer has been explained in details. While discussing the relevant CGST Rules, 2017, several **DRC FORMS** have also been referred. For better understanding the relevant **DRC FORM**, subject of DRC form and the CGST rule or sub-rule under which it has been issued, the Chapter 7 of this e-book may be referred to.

3.2 : Pre-Recovery Processes and Applicable DRC Forms thereof

The pre-recovery phase consists of issuance of notice/statement and issuance of order by the Adjudicating authority. This has been covered in details in e-learning module on “ **issuance of Demand Cum Show Cause notices**” and the same may be carefully gone through to understand the pre-recovery processes. During the pre-recovery process, DRC FORM from **DRC-01A** to **DRC-06** are used. Details of these forms have been discussed in e-learning module on “issuance of Demand Cum Show Cause Notices”.

The recovery process normally starts after expiry of appeal period of Order. During the litigation process by way of appeal or revision against the Order-in-Original, the dues remain restrained arrears as each stage of appeal prescribe pre-deposit of disputed confirmed demands and on deposit of specified portion of disputed tax amount, the order is deemed to be stayed. In case of appeal before HC or SC, the law provides for pre-payment of entire tax amount in dispute.

3.3: Initiation of recovery proceedings (Section 78 of the CGST Act).

3.3.1: When Recovery proceedings to be initiated (*Ref: Section 78 of CGST Act*).

As per section 78 of the CGST Act, 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 three months from the date of service of such order failing which recovery proceedings shall be initiated.

*[Note: The Period of three months to be counted from the date of service of Order by which any amount becomes payable. **Section 169** lays down various methods through which any decision, order, summons, notice or any other communication may be communicated to the concerned taxpayer or any person. This section may be referred to for the purpose of determining the date of service of Order.]*

3.3.2: Initiation of Recovery Proceedings before expiry of 3 months from date of Service of Order (Ref: Proviso to Section 78 of CGST Act)

[Provided that] where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

For the purpose of exercising power under proviso to Section 78 under which the recovery proceedings to be initiated before expiry of three months from the date of service of order , the Commissioner of Central Tax has been assigned the functions of proper officer (**Ref: Circular Nos. 3/3/2017-GST, dated 05.07.2017 and No. 31/05/2018-GST, dated 9/2/2018**) .

3.3.3: Uploading of Summary of Order of Confirmed Demand (Ref: Rule 142 (5) of the CGST Rules, 2017) :

As per rule 142(5) of the CGST Rules, 2017, a summary of the order issued under section 52 (*collection of tax at source*) or section 62 (*assessment of non-filers of returns*) or section 63 (*assessment of unregistered persons*) or section 64 (*special assessment in certain special cases*) or 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*) or or 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*) or section 75 (*General provisions relating to determination of tax*) or section 76 (*Tax collected but not paid to Government*) or section 122 (*Penalty for certain offences*) or

section 123 (*Penalty for failure to furnish information return*) or
section 124 (*Fine for failure to furnish statistics*) or
section 125 (*General penalty*) or
section 127 (*Power to impose penalty in certain cases*) or
section 129 (*Detention, seizure and release of goods and conveyances in transit*)
or section 130 (*Confiscation of goods or conveyances and levy of penalty*)

shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

3.3.4: DRC-7 to be treated as Notice for Recovery (*Ref: Rule 142(6) of the CGST Rules, 2017*))

As per Rule 142(6) of the CGST Rules, 2017, the order referred to in sub-rule (5) **i.e. FORM GST DRC-07** shall be treated as the notice for recovery.

3.3.5: Uploading of Rectification Order in DRC-08 (*Ref: Rule 142(7) of the CGST Rules*):

Where a rectification of the order has been passed in accordance with the provisions of section 161 (*Rectification of error apparent of face of record*) or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.]

3.3.6: Self Assessed Tax and Recovery thereof (*Ref: Section 75 (12) of the CGST Act*).

Where any amount of self-assessed tax in accordance with the return furnished under section 39 (which deals with furnishing of returns) remains unpaid either wholly or partly or any amount of interest payable on such tax remains unpaid, then not withstanding any provisions contained in section 73 or 74, the same is required to recovered under section 79 of the CGST Act, 2017.

Further, the term “*self-assessed tax*’ include the tax payable in respect of outward supplies furnished under **section 37 (as per GSTR-1)**, but not included in the return furnished under section 39 (i.e. GSTR-3B) [*Ref: explanation in section 75(12) inserted with effect from 1.1.2022 and Instruction No. 01/2022-GST, dated 07.01.2022*).

The Instruction No. 01/2022- GST, dated 07.01.2022 lays down guidelines for recovery proceedings under the provisions of section 79 of the CGST Act,2017 in cases covered under explanation to sub-section (12) of section 75 of the CGST Act,2017

3.3.7: Procedure to be adopted in cases of self-assessed tax not paid before initiating action under Section 79 (Ref: Instruction No. 1/2022-GST, dated 7.1.2022)

As per provision of section 75(12) of the CGST Act, 2017, where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-I, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability and the interest thereon are liable to be recovered under the provisions of section 79.

Step 1: To Rule out cases of genuine difference b/w GSTR-1 and GSTR-3B

- (a) **Case of typographical error or wrong reported due to mistake:** There may, however, be some cases where there may be a genuine reason for difference between the details of outward supplies declared in GSTR-1 and those declared in GSTR-3B. For example, the person may have made a typographical error or may have wrongly reported any detail in GSTR-I or GSTR-3B. Such errors or omissions can be rectified by the said person in a subsequent GSTR-I/ GSTR-3B as per the provisions of sub-section (3) of section 37 or the provisions of sub-section (9) of section 39, as the case may be.
- (b) **Outward Supply not declared in the past, but tax paid under GSTR-3B and outward supplies being reported in later tax period:** There may also be cases, where a supply could not be declared by the registered person in GSTR-I of an earlier tax period, though the tax on the same was paid by correctly reporting the said supply in GSTR-3B. The details of such supply may now be reported by the registered person in the GSTR-I of the current tax period. In such cases, there could be a mis-match between GSTR-1 and GSTR-3B (liability reported in GSTR-I > tax paid in GSTR-3B) in the current tax period.

Therefore, in all such cases, an opportunity needs to be provided to the concerned registered person to explain the differences between GSTR-I and GSTR-3B, if any, and for short payment or non-payment of the amount of self-assessed tax liability, and interest thereon, before any action under section 79 of the Act is taken for recovery of the said amount.

Step 2: To send communication to the Registered person asking him to pay or to explain the reasons of short payment or non-payment

Accordingly, where ever any such amount of tax, self-assessed by the registered person in his outward supply statement GSTR-I is found to be short paid or not paid by the said person through his GSTR-3B return in terms of the provisions of sub-section (12) of section 75 of the Act, the proper officer may send a communication (with DIN, in terms of guidelines issued *vide* circular No. 122/41/2019-GST dated 5th November 2019) to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication. If, the concerned person is able to justify the differences between GSTR-I and GSTR-3B, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays the amount such short paid or not paid, then there may not be any requirement to initiate proceedings for recovery under section 79.

Step 3: Proceeding under section 79 to be started if there is no response or no payment of short paid amount

If the said registered person either fails to reply to the proper officer, or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer, then the proceedings for recovery of the said amount as per provisions of section 79 may be initiated by the proper officer. Further, where the said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the proper officer, then the proper officer may proceed for recovery of the said amount as per provisions of section 79.

3.3.8: Legal Provisions laying down manner of dealing with difference in liability reported in statement of outward supplies and that reported in Return (w.e.f. 26.12.2022)

With effect from 26.12.2022 (vide notification No. No. 26/2022-Central Tax, dated 26.12.2022), specific provisions by way of Rule 88C have been incorporated in the CGST Rules, 2017. It provides as under:-

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of **FORM GST DRC-01B**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either, -

(a) pay the amount of the differential tax liability, as specified in Part A of **FORM GST DRC-01B**, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of **FORM GST DRC-01B** electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of **FORM GST DRC-01B**,

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by

the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

3.3.9: Legal Provisions laying down manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return (w.e.f. 04.08.2023).

With effect from **04.08.2023** (*vide* notification No. No. 38/2023-Central Tax, dated 04.08.2023 (w.e.f. 04.08.2023), specific provisions by way of Rule 88D have been incorporated in the CGST Rules, 2017. It provides as under:-

(1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

- (a) pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or
- (b) explain the reasons for the aforesaid difference in input tax credit on the common portal,

within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in the said sub-rule, either,

- (a) pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC-01C, fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C, electronically on the common portal, or
- (b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C,

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.]

3.4: Intimation of certain amounts liable to be recovered under section 79 of the Act.-

Rule 142B (*Inserted vide notification No. 38/2023-Central Tax, dated 04.08.2023 (w.e.f. 04.08.2023)*) in the CGST Rules, 2017 lays down the following procedure for intimating the taxpayer online about amount liable to be recovered under Section 79 of the CGST Rules, 2017. It provides as under:-

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in **FORM GST DRC-01D**, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be the amount of interest, **within seven days** of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in **FORM GST PMT-01**.

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation referred to in sub- rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.]

3.5: Recovery of tax (Ref: Section 79 of the CGST Act)

3.5.1: Modes of recovery of amount due (Ref: Section 79(1) of the CGST Act).

Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes:-

- (i) Recovery by Deduction from any money owed which may be under control of proper officer or specified officer.
- (ii) Recovery by detaining & sale of goods belonging to such person under the control of proper officer or such other specified officer.
- (iii) Recovery from third person
- (iv) Recovery through execution of a decree
- (v) Recovery through sale of movable or immovable property
 - Attachment of debt and shares, etc.
 - Attachment of property in custody of courts or public officer
 - Attachment of interest in partnership
- (vi) Recovery through land revenue authority
- (vii) Recovery through court
- (viii) Recovery through surety

3.5.2: Recovery by deduction by proper officer or specified officer from any money owed (*Ref: Section 79(1) (clause a) of the CGST Act*)

The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer.

3.5.2.1: Procedure of Recovery by deduction from any money owed (*Ref: Rule 143 of CGST Rules*).

Where any amount payable by a person (hereafter referred to in this rule as “the defaulter”) to the Government under any of the provisions of the Act or the rules made thereunder is not paid, the proper officer may require, in **FORM GST DRC-09**, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

3.5.2.2.: Who is specified officer? (*Ref: Explanation to Rule 143 of the CGST Rules*).

As per explanation to Rule 143 of the CGST Rules, 2017, for the purposes of the rule 143, “specified officer” shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly,

by the Central Government or a State Government or the Government of a Union territory or a local authority.

3.5.2.3: Proper officer for recovery through deduction from any money owed (Ref: Section 2(91) of the CGST Act).

The concerned Deputy Commissioner /Assistant Commissioner has been assigned the function of Proper officer for the purpose of recovery by deduction from any money owed (Ref: Board Circular No. 3/3/2017-GST, dated 05.07.2017).

3.5.3: Recovery by Sale of Goods under the Control of Proper Officer or specified officer (Ref: Section 79(1) Clause (b) of the CGST Act):

As per clause (b) of section 79(1) of the CGST Act, 2017, the proper officer 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 proper officer or such other specified officer.

3.5.3.1 Procedure for Recovery by sale of goods under the control of proper officer (Ref: Rule 144 of the CGST Rules, 2017).

The Rule 144 lays down detailed procedure to be followed by proper officer (Deputy /Assistant Commissioner) for recovery of dues by sale of goods belonging to taxpayer under his control. It involves several steps and each of these steps to be taken by proper officer are discussed in following subparagraphs.

3.5.3.2: Preparation of Inventory and Estimation of Market value of goods to be sold (Ref: Rule 144 (1) of CGST Rules, 2017).

Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer (*Deputy Commissioner /Assistant Commissioner*) shall prepare an inventory and estimate the market value of such goods and proceed 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.

3.5.3.3: Goods to be sold through Process of Auction including e-auction and issuance of DRC-10 (*Ref: Rule 144(2) of the CGST Rules, 2017*).

The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC-10** clearly indicating the goods to be sold and the purpose of sale.

3.5.3.4: Minimum time Period of 15 days to be given for submission of Bid or Auction date (*Ref: Rule 144(3) of the CGST Rules, 2017*).

The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2). However 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 proper officer may sell them forthwith.

3.5.3.5: Determination of Pre-bid Amount (*Ref: Rule 144(4) of the CGST Rules, 2017*).

The proper officer (Assistant/Deputy Commissioner) 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 returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be

3.5.3.6: Issuance of Notice in FORM GST DRC-11 to Successful Bidder (*Ref: Rule 144(5) of the CGST Rules, 2017*).

The proper officer (Assistant/Deputy Commissioner) shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in **FORM GST DRC-12**.

3.5.3.7: Cancellation of Recovery Process in case of payment of amount due by Defaulter before Issue of DRC-12) (Ref: Rule 144(6) of the CGST Rules, 2017).

Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer (Assistant/Deputy Commissioner) shall cancel the process of auction and release the goods.

3.5.3.8: Re-auction Process in case of no bid or auction being non-competitive (Ref: Rule 144(7) of the CGST Rules, 2017).

The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

3.5.3.9: Recovery of penalty by sale of goods or conveyance detained or seized in transit. (Ref: Rule 144B of the CGST Rules, 2017)

The Rule 144B of the CGST rules, 2017 (inserted vide notification No. 40/2021-Central Tax, dated 29.12.2021 (w.e.f. 01.01.2022)) lays down the procedure for recovery of penalty by sale of goods or conveyance detained or seized in transit. It provides as under:-

(1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC- 10** clearly indicating the goods or conveyance to be sold and the purpose of sale:

Provided that where the person transporting said goods or the owner of such goods pays the amount of penalty under sub-section (1) of section 129,

including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or conveyance.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(4) The proper officer 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 returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12**.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

(8) Where an appeal has been filed by the person under the provisions of sub-section (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature.

3.5.4. : Recovery from third person (Ref. Section 79(1) (clause C) of CGST Act):

As per clause (c) of section 79(1) of the CGST Act, 2017, the proper officer (Deputy/Assistant Commissioner) may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government 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, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

3.5.4.1 Procedure for Recovery from a third person (Ref: Rule 145 of CGST Rules, 2017)

For the purpose of recovery from a third person, detailed procedure has been prescribed in Rule 145 of the CGST Rules, 2017.

3.5.4.2: Notice to third Person to deposit the amount specified-Issuance of DRC-13 (Ref: Rule 145(1) of the CGST Rules, 2017)

The proper officer (Deputy /Assistant Commissioner) may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as “the third person”), a notice in **FORM GST DRC-13** directing him to deposit the amount specified in the notice.

3.5.4.3: Payment by Third Person-Issuance of DRC-14 (Ref: Rule 145(2) of the CGST Rules, 2017)

Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged.

3.5.4.4: Third Person Bound to Comply with Notice Issued (Ref: Section 79 (1) (clause (c)) (sub-clause (ii))

Every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, 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.

3.5.4.5: Failure to make Payment and consequence thereof (*Ref: Section 79 (1) (clause (c) (sub-clause (iii))*)

In case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

3.5.4.6: Amendment or revocation of Notice or Extension of date for making payment (*Ref: Section 79 (1) (clause (c) (sub-clause (iv))*)

The officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

3.5.4.7: Payment by Third Person to be considered as due discharge of his liability towards the person in default (*Ref: Section 79 (1) (clause (c) (sub-clause (v))*)

Any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default 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 person in default to the extent of the amount specified in the receipt;

3.5.4.8: Discharge of liability to the person in default after issuance of notice-consequence thereof to the third person (*Ref: Section 79 (1) (clause (c) (sub-clause (vi))*)

Any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the

Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

3.5.4.9: Action in case of satisfactory Explanation by Third person proving no liability to pay to person in default ((Ref: Section 79 (1) (clause (c) (sub-clause (vii)))

Where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.

3.5.4.10: Recovery through Execution of a decree, etc. (Ref: Rule 146 of the CGST Rules, 2017).

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 proper officer (Deputy or Assistant Commissioner) 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.

3.5.5: Recovery by Sale of Movable or Immovable property (Ref: Section 79(1) (clause d):

As per provision contained in clause (d) of section 79(1) of the CGST Act, 2017, the proper officer (Deputy or Assistant Commissioner) 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 such person, and detain the same until the amount payable is paid; and 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 thirty 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 such person.

3.5.5.1: Procedure for Recovery by sale of movable or immovable property *(Rule 147 of the CGST Rules, 2017).*-

The Rule 147 of the CGST Rules, 2017 lays down detailed procedure for recovery of due by sale of movable or immovable property.

3.5.5.2: Preparation of List of Movable and Immovable Property of defaulter and Issuance of Order of Attachment or Distraint and Notice for Sale in FORM GST DRC-16 *(Ref: Rule 147(1) of the CGST Rules, 2017)*

The proper officer (Deputy or Assistant Commissioner) shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in **FORM GST DRC-16** prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

However, the attachment of any property in 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 in the manner provided in Rule 151.

3.5.5.3: Sending Order copy of Attachment or Distraint to Concerned Authority *(Ref: Rule 147 (2) of the CGST Rules, 2017).*

The proper officer (Deputy or Assistant Commissioner) shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the proper officer to that effect.

3.5.5.4: Manner of Affixing Attachment or Distraint Order and Seizure and Custody of Movable Property *(Ref: Rule 147(3) of the CGST Rules, 2017)*

Where the property subject to the attachment or distraint under sub-rule (1) 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 proper officer 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 proper officer (Deputy or Assistant Commissioner) himself or an officer authorised by him.

3.5.5.5: Sale of Property Attached or Distraint through Auction and Issuance of Notice in FORM GST DRC-17 (Ref: Rule 147(4) of the CGST Rules, 2017).

The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in **FORM GST DRC- 17** clearly indicating the property to be sold and the purpose of sale.

3.5.5.6: Procedure for Sale of Property (if it is) in form of Negotiable Instrument or Share in a Corporation (Ref: Rule 147(5) of the CGST Rules, 2017).

Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer (Deputy or Assistant Commissioner) 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.

3.5.5.7: Specifying Pre-Bid Amount and Return/forfeiture of Bid Amount (Ref: Rule 147(6) of the CGST Rules, 2017).

The proper officer (Deputy or Assistant Commissioner) 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 returned

to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

3.5.5.8: Minimum 15 days to Given for Submission of bid or Before Auction with exception in case of Perishable or Hazardous Goods (*Ref: Rule 147(7) of the CGST Rules, 2017*).

The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (4). However, 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 proper officer (Deputy or Assistant Commissioner) may sell them forthwith.

3.5.5.9: Procedure in case of claim/objection regarding Attachment or Distraint of any Property (*Ref: Rule 147(8) of the CGST Rules, 2017*).

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 proper officer (Deputy or Assistant Commissioner) shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.

3.5.5.10: Production of Evidence making claim or objection of sale of property under Attachment or Distraint (*Ref: Rule 147(09) of the CGST Rules, 2017*).

The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distraint.

3.5.5.11: Release of Property under Attachment or Distraint in Certain Cases (*Ref: Rule 147(10) of the CGST Rules, 2017*).

Where, upon investigation, the proper officer (Deputy or Assistant Commissioner) is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on

the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distraint.

3.5.5.12: Rejection of Claim in Certain Situation and procedure Regarding *(Ref: Rule 147(11) of the CGST Rules, 2017).*

Where the proper officer (Deputy or Assistant Commissioner) 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 proper officer shall reject the claim and proceed with the process of sale through auction.

3.5.5.13: Issuance of Notice to the Successful Bidder in Form GST DRC-11 *(Ref: Rule 147(12) of the CGST Rules, 2017).*

The proper officer (Deputy or Assistant Commissioner) shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of such notice and after the said payment is made, he shall issue a certificate in **FORM GST DRC-12** specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder. However, 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.

3.5.5.14: Transferee of Property Required to Pay Stamp duty, tax or any fee payable on transferred property *(Ref: Rule 147(13) of the CGST Rules, 2017)*

Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom the title in such property is transferred.

3.5.5.15: Cancellation of Process of Auction on Payment of amount under Recovery by Defaulter before issue of DRC-17 (Ref: Rule 147(14) of the CGST Rules, 2017).

Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer (Deputy or Assistant Commissioner) shall cancel the process of auction and release the goods.

3.5.5.16: Re-Auction in Case of No Bid or non-competitive Auction (Ref: Rule 147(15) of the CGST Rules, 2017).

The proper officer (Deputy or Assistant Commissioner) shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

3.5.5.17: Prohibition against Bidding or purchase by Officer (Ref: Rule 148 of the CGST Rules, 2017)

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter (i.e. Chapter XVIII: Demands and Recovery) shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

3.5.5.18: Prohibition against sale on holidays (Ref: Rule 149 of the CGST Rules, 2017)

No sale under the rules under the provision of this chapter (Chapter XVIII: Demands and Recovery) 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.

3.5.5.19: Assistance by Police (Ref: Rule 150 of the CGST Rules, 2017).

The proper officer (Superintendent of Central Tax) 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.

3.5.5.20: Procedure of Attachment of debts and shares, etc. (*Ref: Rule 151 of the CGST Rules, 2017*).

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 proper officer;
- (b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

3.5.5.20.1: Affixing the Copy of DRC-16 in Conspicuous Part of the Office by Proper Officer (*Ref: Rule 151 (2) of the CGST Rules, 2017*).

A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, 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.

3.5.5.20.2: Payment of Debt by Debtor Prohibited under Rule 151(1) Clause (a) and consequence regarding (*Ref: Rule 151(3) of CGST Rules, 2017*)

A debtor, prohibited under clause (a) of sub-rule (1), may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

3.5.5.21: Attachment of property in custody of courts or public officer (*Ref: Rule 152 of the CGST Rules, 2017*).

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

3.5.5.22: Attachment of interest in Partnership (*Ref: Rule 153 of the CGST Rules, 2017*).

Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer (Deputy or Assistant Commissioner) may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require. The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

3.5.5.23: Disposal of Proceeds of sale of Goods or conveyance and movable or immovable property (*Ref: Rule 154 of the CGST Rules, 2017*).

The amounts so 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 Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and
- (d) any balance, be paid to the defaulter.

The rule 154 was substituted with effect from 1.1.2022 vide notification No. 40/2021-Central Tax, dated 29.12.2021. The substituted Rule 154 provides as under:-

(1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall, -

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and
- (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.]

3.5.6: Recovery through land revenue authority (*Ref: Section 79(1)(clause e) of the CGST Act, 2017:*

The proper officer (Deputy or Assistant Commissioner) may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

3.5.6.1: Procedure for Recovery through Land Revenue Authority (*Ref: Rule 155 of the CGST Rules, 2017).*

Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer (Deputy or Assistant Commissioner) shall send a certificate to the Collector or Deputy Commissioner

of the district or any other officer authorised in this behalf in **FORM GST DRC-18** to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.

3.5.7: Recovery through Court (*Ref: Section 79(1) Clause (f) of the CGST Act*).

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer (Deputy or Assistant Commissioner) may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

3.5.7.1 Procedure for Recovery through court-Issuance of DRC-19 (*Ref: Rule 156 of the CGST Rules, 2017*).

Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer (Deputy or Assistant Commissioner) shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub-section (1) of section 79 in **FORM GST DRC- 19** to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.

3.5.8: Recovery through Surety (*Ref: Section 79(2) of CGST Act*).

Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

3.5.8.1 Procedure for Recovery from surety (*Ref: Rule 157 of the CGST Rules*).

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.

3.6 Recovery of CGST Dues by Proper Officer of State Tax or Union Territory Tax (*Ref: Section 79(3) of CGST Act*).

Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

3.7: Equal Distribution of Amount between Central Government And State Government When Amount recovered is less than amount due (Ref: Section 79 (4) of the CGST Act).

Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

3.8. Meaning of Word “Person” for purpose of Section 79 of the CGST Act, 2017 (Ref: Explanation to Section 79 of the CGST Act, 2017).

As per explanation to section 79 of the CGST Act, 2017, for the purposes of section 79, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25. This was inserted in Section 79 vide section 24 of the CGST (Amendment) Act, 2018 (No. 31 of 2018) (w.e.f. 01.02.2019).

Chapter 4: Recovery of Arrears Under Existing Law

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4.1: Introduction

On introduction of GST, several taxes imposed by Central or State Government has been subsumed in GST and several Acts enacted by the Central Government and State Governments, have been partially or fully repealed. These laws provided for levy and collection of duty or tax on goods or services prior to their repeal or amendment on introduction of GST with effect to 1.7.2017.

Vide sub-section (1) of section 174 of the CGST Act, 2017, the following Acts have been repealed with effect from 1.7.2017:

- (i) the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution).
- (ii) the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
- (iii) the Additional Duties of Excise (Goods of Special Importance) Act, 1957.
- (iv) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978; and
- (v) the Central Excise Tariff Act, 1985.

In addition, vide section 173 of the CGST Act, 2017, the provisions of the Chapter V of the Finance Act, 1994, which provided levy and collection of service tax has been omitted.

4.2 Protection to proceedings initiated under Pre-GST regime (Ref: Section 174 (2) (e) of the CGST Act, 2017).

The proceedings in process or litigation including already in process under these pre-GST regime laws have been suitably saved by way of incorporation of section 174 of the CGST Act, 2017 which deals with repeal and saving. The section 174 of the CGST Act, 2017 provides as under:-

Section 174. Repeal and Saving

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties

of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section(1) or section 173 shall not—

- (a) revive anything not in force or existing at the time of such amendment or repeal; or*
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:*

***Provided that** any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or*

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or*
- (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;*
- (f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.*

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

4.3: Meaning of term “Existing Laws” (Ref: Section 2(48) of the CGST Act, 2017).

The term “existing law” has been defined under section 2(48) of the CGST Act, 2017. It means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation.

4.4 Recovery of Dues under Existing Law

The disputes under earlier tax -regime has been in process after 1st July, 2017 also. In several of these cases, the tax amount has become due for recovery after finalisation of tax dispute after 1.7.2017. The Provisions has been incorporated in the CGST Act, 2017 and the CGST Rules, 2017 to recover these dues which has arisen under laws in existence in the pre-GST era notwithstanding repeal or amendment of these pre-GST laws.

4.5: Dues under Existing Laws to be Recovered under CGST Act, 2017 (Ref: Section 142 (8) (a) of the CGST Act, 2017)

The Section 142(8) (a) of the CGST Act, 2017 incorporates with regard to dues recoverable under existing laws to be recovered under the CGST Act, 2017 and provides as under:-

Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

4.6: Procedure to Recover dues under Existing Law (Ref: Rule 142A of the CGST Rules, 2017)

Rule 142A of the CGST Rules, 2017 lays down procedure for recovery of dues arisen under Existing law to be recovered under the CGST Act, 2017. The Rule 142A has been inserted in the CGST Rules, 2017 vide notification No. 60/2018 – Central Tax, dated 30.10.2018 (w.e.f. 30.10.2018).

4.6.1: Uploading of Summary of order in FORM GST DRC-07A and Demand of the Order in Electronic Liability Register in FORM GST PMT-01 (Ref: Rule 142A (1) of the CGST Rules, 2017).

A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in **FORM GST DRC-07A** electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in **FORM GST PMT-01**.

4.6.2: DRC-08A to be issued if Demand is subsequently Modified/ Rectified/ Quashed (Ref: Rule 142A(2) of the CGST Rules, 2017)

Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in **FORM GST DRC-08A** and Part II of Electronic Liability Register in **FORM GST PMT-01** shall be updated accordingly.

4.7: Other Provisions under CGST Act/Rules Enabling Recovery of dues under Existing Laws (Ref: Section 142(6) to 142(9) of the CGST Act, 2017).

As enabling provisions by way of Section 142 of the CGST Act, 2017 which contains Miscellaneous transitional provision, inter alia also provides for recovery of dues arising under existing law before or after appointed day (01.07.2017). The sub-section (6) to (9) of section 142 specially deals with

recovery of dues under existing law to be recovered under CGST Act, 2017 as dues of Central Tax.

4.7.1: Recovery of CENVAT Credit found recoverable (Ref: Section 142 (6)(b) of the CGST, 2017).

Provision for Recovery of CENVAT Credit which has been subsequently found recoverable has been specifically incorporated in clause (b) of sub-section (6) of Section 142 of CGST Act, 2017 and provides as under:-

Section 142 (6) (b): Every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

4.7.2: Recovery of output duty or tax under Existing law (Ref: section 142 (7) (a) of the CGST Act, 2017).

Provision for Recovery of Output Duty or Tax which has been subsequently found recoverable has been specifically incorporated in clause (a) of sub-section (7) of Section 142 and provides as under:-

Section 142 (7) (a): every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

4.7.3: Recovery of dues arising out of assessment or adjudicating proceedings under Existing laws (Ref: Section 142(8)(a) of the CGST Act, 2017).

Provision for Recovery of dues arising out of assessment or adjudication proceedings under existing laws has been specifically incorporated in clause (a) of sub-section (8) of Section 142 and provides as under:-

Section 142 (8) (a): where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

4.7.4: Recovery of **Amount found recoverable on revision of Returns furnished under Existing laws** (Ref: section 142 (9) (a) of the CGST Act, 2017).

Provision for Recovery of amount found recoverable on revision of Returns furnished under Existing laws has been specifically incorporated in clause (a) of sub-section (9) of Section 142 and provides as under:-

Section 142 (9) (a): where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

4.8 Procedure Specified by Government Under Section 168 of CGST Act, 2017 for Recovery of Arrears (Ref: Circular No. 42/16/2018-GST, dated 13.04.2018).

Under section 168 (1) of the CGST Act, 2017 for ensuring uniformity of practices by the field formation, the Government has issued Circular No. 42/16/2018-GST, dated 13.04.2018 and has specified the following procedure for recovery of arrears arising out of proceedings under the existing law:-

Issue-I: Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:

Clarification:

- (a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**).
- (b) The arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations covered in section 142 (6) to (9) of CGST Act, 2017, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**).

Issue-II: Recovery of interest, penalty and late fee payable:

Clarification :

- (a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations covered in section 142 (6) to 142(9) above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**).
- (b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations covered in Section 142(6) to 142(9) of the CGST Act, 2017, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**).

Issue-III: Payment of central excise duty & service tax on account of returns filed for the past period:

Clarification: The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto www.aces.gov.in and make payment relating to the same through EASIEST portal (cbec-easiest.gov.in), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on www.aces.gov.in but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

Issue-IV: Recovery of arrears from assesseees under the existing law in cases where such assesseees are not registered under the CGST Act, 2017:

Clarification: Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in issue III above.

Note: In case of any doubt, the Original Circular No. 42/16/2018-GST, dated 13.04.2018 may be referred.

Chapter 5: Other Miscellaneous Recovery Provisions

Heading No.	Subject in Brief
5.1	Introduction
5.2	Payment of tax and other amount in Installment (<i>Ref: Section 80 of the CGST Act</i>)
5.2.1.	Procedure for Payment of tax and other amounts in instalments (<i>Ref: Rule 158 of the CGST Rules, 2017</i>)
5.2.2	Filing of Application for payment of taxes or any amount in Installment and Calling of Report from Jurisdictional Officers (<i>Ref: Rule 158 (1) of the CGST Rules, 2017</i>)
5.2.3	Issuance of Order in FORM GST DRC-21 (<i>Ref: Rule 158 (2) of the CGST Rules, 2017</i>)
5.2.4	Situation where Facility to pay tax or any amount in Instalment not allowed (<i>Ref: Rule 158(3) of the CGST Rules, 2017</i>)
5.3	Transfer of Property to be Void in Certain Cases (<i>Ref: Section 81 of the CGST Act, 2017</i>)
5.4	Tax to be first Charge (<i>Ref: Section 82 of the CGST Act, 2017</i>)
5.5	Provisional attachment to protect revenue in certain cases (<i>Ref: Section 83(1) of the CGST Act, 2017</i>)
5.5.1	Amended Provision of Section 83(1) of the CGST Act, 2017 (<i>with effect from 1.1.2022</i>).
5.5.2	Ceasing of Provisional Attachment (<i>Ref: Section 83(2) of the CGST Act, 2017</i>)
5.6	Guidelines Prescribed by the Board with regard to Provisional Attachment of Property (<i>Ref: Instructions No. CBEC-20/16/05/2021-GST/359, dated 23.02.2021</i>)
5.6.1	Grounds for Attachment of Property
5.6.2	Procedure for Provisional Attachment of Property
5.6.3	Provisional Attachment of Properties of Perishable/Hazardous Nature
5.6.4	Cases fit for provisional attachment of property

5.6.5	Types of property that can be attached
5.6.6	Attachment Period
5.6.7	Timely Completion of Investigation and Adjudication
5.6.8	Provisional Attachment in case where the concerned person has Share in property
5.6.9	Property exempt from attachment
5.7	Continuation and validation of certain recovery proceedings (<i>Ref: Section 84 of the CGST Act, 2017</i>)
5.7.1	Issuance of DRC-25 in case of Reduction or Enhancement of any demand (<i>Ref: Rule 161 of the CGST Rules, 2017</i>)

5.1 Introduction

In this Chapter, several other important provisions of GST laws that are in the form of measures to be taken by officers to safeguard to interest of Government revenue. These measures *inter alia* include provisions enabling provisional attachment of property of non-compliant taxpayer, which can be taken even during investigation.

5.2: Payment of tax and other amount in instalments (Ref: Section 80 of the CGST Act).

As per section 80 of the CGST Act, 2017, on an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty-four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

However, 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.

5.2.1: Procedure for Payment of tax and other amounts in instalments (Ref: Rule 158 of the CGST Rules, 2017).

Under Rule 158 of the CGST Rules, 2017, Government has laid down conditions and limitation subject to which power to allow payment of tax and other amounts in instalment may be exercised by the Commissioner. The procedure to be followed in this regard has been discussed in details in following sub-paragraphs.

5.2.2: Filing of Application for payment of taxes or any amount in Instalment and Calling of Report from Jurisdictional Officers (Ref: Rule 158(1) of the CGST Rules, 2017).

On an application filed electronically by a taxable person, in **FORM GST DRC- 20**, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

5.2.3: Issuance of Order in FORM GST DRC-21 (*Ref: Rule 158(2) of the CGST Rules, 2017*)

Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in **FORM GST DRC- 21** allowing the taxable person further time to make payment and/or to pay the amount in such monthly instalments, not exceeding twenty-four, as he may deem fit.

5.2.4: Situation where Facility to pay tax or any amount in Instalment not allowed (*Ref: Rule 158(3) of the CGST Rules, 2017*)

The facility referred to in sub-rule (2) shall not be allowed where-

- (a) the taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017, for which the recovery process is on;
- (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017;
- (c) the amount for which instalment facility is sought is less than twenty-five thousand rupees.

5.3 Transfer of property to be void in certain cases (*Ref: Section 81 of the CGST Act, 2017*).

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties 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:

However such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer (Additional or Joint Commissioner).

5.4. Tax to be first charge on property (Ref: Section 82 of the CGST Act, 2017).

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, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Note: In case of conflict in the provisions of section 82 of the CGST Act, 2017 and the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), the provision of Insolvency and Bankruptcy Code, 2016 shall prevail.

5.5: Provisional attachment to protect revenue in certain cases (Ref: Section 83 (1) of the CGST Act, 2017):

Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

5.5.1: Amended Provision of Section 83(1) of the CGST Act, 2017

The provision of Section 83(1) of the CGST Act, 2017 has been amended vide section 115 of the Finance Act, 2021 (No. 13 of 2021) as given below. The amended provision has come into effect with effect from 1.1.2022. After coming into force, the amended provision provides as under:-

[(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.]

5.5.2: Ceasing of Provisional Attachment (*Ref: Section 83(2) of the CGST Act, 2017*).

Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

5.6: Guidelines Prescribed by the Board with regard to Provisional Attachment of Property

Vide Instructions No. CBEC-20/16/05/2021-GST/359, dated 23.02.2021, the board has prescribed Guidelines for provisional attachment of Property under section 83 of the CGST Act, 2017. The relevant ingredient of the instruction issued by the Board has been explained in following sub-paragraphs.

5.6.1: Grounds for Attachment of Property

- (1) There must be pendency of a proceeding against a taxable person under sections mentioned in Section 83 of the Act.
- (2) The Commissioner must have formed the opinion that provisional attachment of the property belonging to the taxable person is necessary for the purpose of protecting the interest of the Government Revenue

For forming an opinion under section 83, it is important that Commissioner must exercise due diligence and carefully examine all the facts of the case,

including the nature of offence, amount of revenue involved, establish nature of business and extent of investment in capital assets and reasons to believe that the taxable person against whom the proceedings referred in section 83 are pending, may dispose of or the remove the property if not attached provisionally.

The basis, on which Commissioner has found such an opinion should be duly recorded on file.

Board has advised officer that the power of provisional attachment must not be exercised in a routine/mechanical manner and careful examination of all the facts of the case is important to determine whether the case(s) is fit for exercising power under section 83. The collective evidence, based on the proceedings/enquiry conducted in the case, must indicate that the prima-facie a case has been made out against the taxpayer, before going ahead with any provisional attachment. The remedy of attachment being, by its very nature, extraordinary has to be resorted to without utmost circumspection and with maximum care and caution.

5.6.2: Procedure for Provisional Attachment of Property

The Board has laid down the following Procedure for provisional Attachment of Property:-

- (1) In case, the commissioner forms an opinion to attach any property, including bank account, of the taxable person in terms of section 83, he should duly record on file the basis on which he has formed such an opinion. He should, thereafter, pass an order in FORM GST DRC-22 with proper document identification number (DIN) mentioning therein the details of property being attached.
- (2) A copy of the order of attachment should be sent to the concerned Revenue authority or Transport Authority or Bank or the relevant authority to place encumbrance on the said movable or immovable property. The property, thus attached, shall be removed only on the written instructions from the commissioner.

- (3) A copy of such attachment order should be provided to the said taxable person as early as possible so that objections, if any, to the said attachment can be made by the taxable person within the time frame prescribed under rule 159 of the CGST Rules. If such objection is filed by the taxable person, Commissioner should provide an opportunity of being heard to the person filing the objection.
- (4) After considering the fact presented by the person in his written objections as well as during a personal hearing, if any, the Commissioner should form a reasoned view whether the property is still required to be continued to be attached or not and pass an order in writing to this effect. In case, the commissioner is satisfied that the property was or is no longer liable for attachment, he may release his property by issuing order in FORM GST DRC 23.
- (5) Even in cases where objection is not filed within the time prescribed under rule 159(5) of CGST rules the Commissioner may take the grounds mentioned in the said objection/representation on record and pass a reasoned order. Where the Commissioner is satisfied that property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC-23.
- (6) Each such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of order of attachment.**

5.6.3: Provisional Attachment of Properties of Perishable/Hazardous Nature

If the provisionally attached properties of perishable/ hazardous nature, then such property shall be released to the taxable person by issuing order in **FORM GST DRC-23**, after taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower and submits proof of payment.

In case the taxable person fails to pay the said amount, then the said property of perishable or hazardous nature may be disposed of and the amount recovered from such disposal of property shall be adjustable against the tax,

interest, penalty, fee or any other amount payable by the taxable person. Further, the sale proceeds thus obtained must be deposited with the nearest government treasury or Branch of any nationalized bank in fixed deposit and the receipt thereof must be retained for record, so that same can be adjusted against the amount determined to be recoverable from the said taxable person.

5.6.4 Cases fit for provisional attachment of property

As the remedy of attachment being, by its very nature, extraordinary, needs to be resorted to with utmost circumspection and with maximum care and caution. It normally should not be invoked in cases of technical nature and should be resorted to mainly in cases where there is an evasion of tax or where wrongful input tax credit is availed or utilized or wrongfully passed on. While the specific facts of the case need to be examined in detail before forming an opinion in the matter, the following are some of type of cases, where provisional attachment can be considered to be resorted to, subject to specific facts of the case:

Where taxable person has:

- a. supplied any goods or services or both without issue of any invoice, in violation of the provisions of the Act or the rules made there under, with an intention to evade tax; or
- b. issued any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made there under; or
- c. availed input tax credit using the invoice or bill referred to in clause (b) or fraudulently availed input tax credit without any invoice or bill; or
- d. collected any amount as tax but has failed to pay the same to the Government beyond a period of three months from the date of which such payment becomes due; or
- e. fraudulently obtained refund; or
- f. passed of input tax credit fraudulently to the recipients but has not paid the commensurate tax

The above list is illustrative only and not exhaustive. The Commissioner, may examine the specific facts of the case and take a reasoned view in the matter.

5.6.5: Types of property that can be attached

The Board has issued following directions in this regard.

- (a) As per Board directions, it should be ensured that the value of property attached provisionally is not excessive. The provisional attachment of property shall be to the extent it is required to protect the interest of revenue, that is to say, the value of attached property should be as near as possible to the estimated amount of pending revenue against such person.
- (b) More than one property may be attached in case value of one property is not sufficient to cover the estimated amount of pending revenue against such person. Further, different properties of the taxpayer can be attached at different points of time subject to the conditions specified in section 83 of the Act.
- (c) the provisional attachment can be made only of the property belonging to the taxable person, against whom the proceedings mentioned under section 83 of the Act are pending.
- (d) Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.
- (e) As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs required for production of finished goods should not normally be attached by the Department.
- (f) In cases where the movable property, including bank account, belonging to taxable person has been attached, such movable property may be released if taxable person offers, in lieu of movable property, any other immovable property which is sufficient to protect the interest of revenue. Such immovable property should be of value not less than the tax amount in dispute. It should also be free from any subsisting charge, liens, mortgages or encumbrances, property tax fully paid up to date and not involved in any legal dispute. The taxable person must produce the original title needs and other necessary information relating to the property, for the satisfaction of the concerned officer.

5.6.6 Attachment Period

Every provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the provisional attachment order. Besides the provisional attachment order shall also cease to have effect if an order in **FORM GST DRC-23** for release of such property is made by the Commissioner.

5.6.7: Timely Completion of Investigation and Adjudication

As the provisional attachment of property is resorted to protect the interests of the revenue and may also affect the working capital of the taxable person, it may be endeavored that in all such cases, the investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of tax as well as interest, penalty etc. arising upon adjudication can be recovered from the said taxable person and the purpose of attachment is achieved.

5.6.8: Provisional Attachment in case where the concerned person has Share in property

Where the property to be provisionally attached consists of the share or interest of the concerned taxable person in property belonging to him and another as co-owners, the provisional attachment shall be made by order to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

5.6.9: Property exempt from attachment

All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment

5.7: Continuation and validation of certain recovery proceedings (*Ref: Section 84 of the CGST Act, 2017*).

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as “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 in such appeal, revision or other proceedings, 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 in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;
- (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 demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

5.7.1: Issuance of DRC-25 in case of Reduction or Enhancement of any demand (*Ref:- Rule 161 of the CGST Rules, 2017*).

The intimation or notice for the reduction or enhancement of any demand under section 84 shall be issued in **FORM GST DRC- 25**.

Chapter 6: Liability to Pay in Certain Cases.

Heading No.	Subject in Brief
6.1	Introduction
6.2	Liability in case of transfer of business before the date of transfer (<i>Ref: Section 85 (1) of the CGST Act, 2017</i>)
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6.1: Introduction

At times, it remains doubtful as from whom the tax dues should be recovered or in other words, it is not clear as to who has liability to pay the dues in given circumstances. To recover the due and to initiate the recovery procedure, it is absolutely must to have clarity as to from whom tax is to be recovered. The law makers have incorporated several provisions (Sections 85 to 94) in this regard in Chapter XVI of the CGST Act, 2017 so as to impart clarity to the field officers entrusted with responsibility to administer and implement GST laws and to reduce litigation on this count. In this chapter, efforts have been made to educate the tax officers in this regard.

6.2: Liability in case of transfer of business before the date of transfer (*Ref: Section 85 (1) of the CGST Act, 2017*).

Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

6.2.1: Exclusive Liability of Transferee of Business from the date of transfer (*Ref: Section 85 (2) of the CGST Act, 2017*).

Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect

from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

6.3 Liability of agent and principal (Ref: Section 86 of the CGST Act, 2017)

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

6.4: Liability in case of amalgamation or merger of companies (Ref: Section 87 (1) of the CGST Act, 2017)

When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

6.4.1: Companies amalgamating or merging to be treated as distinct companies for the purpose of GST for period upto the Date of Order of Court or Tribunal (Ref: Section 87(2) of the CGST Act, 2017)

Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

6.5: Liability in case of company in liquidation (Ref: Section 88 of the CGST Act, 2017)

Section 88 of the CGST Act, 2017 contains provision for determination of liability in case where the company is under liquidation.

6.5.1: Intimation of appointment by Liquidation to the Commissioner with 30 days of his appointment (Ref: Section 88 (1) of the CGST Act, 2017).

When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the “liquidator”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

6.5.2: Commission to notify the Liquidator within 3 months of amount payable (*Ref: Section 88(2) of the CGST Act, 2017*).

The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

6.5.3: Liability to pay dues on Director of Private Company in case of Winding Up of Private Companies (*Ref: Section 88(3) of the CGST Act, 2017*).

When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

6.6. Liability of directors of private company (*Ref: Section 89(1) of the CGST Act, 2017*).

Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Note: Provision of Companies Act, 2013 not applicable if it is in conflict with the above provision contained in CGST Act, 2017.

6.6.1: Provision of Section 89(1) not to apply in case of conversion from Private Company to public Company (Ref: Section 89(2) of the CGST Act, 2017).

Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

6.6.2: Recovery of Personal Penalty imposed on Director: Provision of Section 89(2) Not Applicable (Ref: Proviso to Section 89(2) of the CGST Act, 2017)

Nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

6.7: Liability of partners of firm to pay tax (Ref: Section 90 of the CGST Act, 2017)

Section 90 of the CGST Act, 2017 contains provision to determine liability of firms or partners in case of partnership firm.

6.7.1. Firm and Partners of Firms liable to pay Jointly and severally (Ref: Section 90 of the CGST Act, 2017).

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

6.7.2: Liability of Retired Partner only upto date of his retirement on Intimation of date of Retirement to Commissioner (Ref: *First Proviso to Section 90 of the CGST Act, 2017*)

Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

6.7.3: Liability of Retired Partner to continue in case of failure to give intimation of date of retirement to Commissioner (Ref: *Second Proviso to Section 90 of the CGST Act, 2017*).

If no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

6.8 Liability of guardians, trustees, etc. (Ref: Section 91 of the CGST Act, 2017)

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

6.9: Liability of Court of Wards, etc. (Ref: *Section 92 of the CGST Act, 2017*)

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable

from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

6.10 Special provisions regarding liability to pay tax, interest or penalty in certain cases (*Ref: Section 93 of the CGST Act, 2017*)

The section 93 of the CGST Act, 2017 contains special provision regarding liability to pay tax, interest or penalty in certain specific situations. Further, in case of conflict of the provision of section 93 with the provisions contained in the Insolvency and Bankruptcy Code, 2016, the provision of Insolvency and Bankruptcy Code, 2016 shall prevail.

6.10.1: Liability to pay when person liable to pay dies (*Ref: Section 93(1) of the CGST Act, 2017*).

The section 93(1) of the CGST Act, 2017 details with this situation in details and the same has been explained in details in following sub-paragraphs.

6.10.1.1: Liability in case when Business is continued by legal representative or any other person (*Ref: Clause (a) of Section 93(1) of the CGST Act, 2017*).

If a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.

6.10.1.2: Liability when business is discontinued after death (*Ref: Clause (b) of the Section 93(1) of the CGST Act, 2017*).

If the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

6.10.2: When Taxable person liable to pay dues is HUF or an association of Persons (*Ref: 93(2) of the CGST Act, 2017*).

Where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

6.10.3: When taxable person liable to pay dues is firm and firm is dissolved (*Ref: Section 93(3) of the CGST Act, 2017*).

Where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

6.10.4: When taxable person liable to pay dues is a guardian of a ward or trustee (*Ref: Section 93(4) of the CGST Act, 2017*).

Where a taxable person liable to pay tax, interest or penalty under this Act,—

- (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or
- (b) is a trustee who carries on the business under a trust for a beneficiary,

then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

6.11: Liability in other cases (*Ref: Section 94 of the CGST Act, 2017*).

6.11.1: When Taxable person liable to pay is a firm or an association of persons or a HUF and business is discontinued (Ref: Section 94(1) of the CGST Act, 2017).

Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

- (a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and
- (b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

6.11.2: When there is change in constitution of a firm or an association of persons, partners of the firm or member of association (Ref: Section 94(2) of the CGST Act, 2017).

Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

6.11.3: When taxable person is a firm or association of persons and is dissolved or when taxable person is HUF and is partitioned the business, the term discontinuance in section 94(1) to be construed as reference to dissolution or to partition (Ref: Section 94(3) of the CGST Act, 2017).

The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the

taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

6.12: Meaning of terms “Limited Liability Partnership” and Court for the purpose of Chapter XVI of the CGST Act, 2017 (Ref: Explanation to Chapter XVI).

The explanation to the Chapter XVI (Liability to pay in certain cases) of the CGST Act, 2017 dealing with liability to pay taxes defines the terms LLP and Court as per definition given below:-

- (i) a “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
- (ii) “court” means the District Court, High Court or Supreme Court.

Chapter 7: Demand and Recovery Challans-Forms and Formats

Details of various DRC form, their subject and Rules under which the same has been issued are given in Table below.

Table

Sr. No.	FORM No	Subject Heading of Form	Relevant Rules
1.	FORM GST DRC-01	Summary of Show Cause Notice	Rule 100 (2) and 142(1)(a)
2.	FORM GST DRC-01A	Intimation of tax ascertained as being payable under section 73(5)/74(3)	Rule 142(1A)
3.	FORM GST DRC-01B (Inserted vide notification No. 26/2022-Central Tax, dated 26.12.2022)	Part A (system Generated): Intimation of difference in liability reported in statement of outward supplies and that reported in return Part B: Reply by taxpayer in respect of the Intimation of difference in liability	Rule 88C
4.	FORM GST DRC-01C (Inserted vide notification No. 38/2023-Central Tax, dated 04.08.2023)	Part A (System Generated): Intimation of difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return Part B: Reply by taxpayer in respect of the intimation of difference in input tax credit	Rule 88D
5.	FORM GST DRC-01D (Inserted vide notification No. 38/2023-Central Tax, dated 04.08.2023)	Intimation for amount recoverable under section 79	Rule 142B
6.	FORM GST DRC-02	Summary of Statement	Rule 142(1)(b)
7.	FORM GST DRC-03 [substituted vide notification No. 26/2022-Central Tax, dated 26.12.2022]	Intimation of payment made voluntarily or made against the Show Cause Notice (SCN) or Statement or intimation of tax ascertained through FORM GST DRC-01A	Rule 142(2) and 142(3)
8.	FORM GST DRC-04	Acknowledgement of acceptance of payment made voluntarily	Rule 142(2)

9.	FORM GST DRC-05	Intimation of conclusion of Proceedings	Rule 142(3)
10.	FORM GST DRC-06	Reply to the Show Cause Notice	Rule 142(4)
11.	FORM GST DRC-07	Summary of the order	Rules 100(1),100(2), 100(3) and 142(5)
12.	FORM GST DRC-07A	Summary of the Order Creating Demand under Existing Laws	Rule 142 A(1)
13.	FORM GST DRC-08	Summary of Rectification /Withdrawal Order	Rule 142(7)
14.	FORM GST DRC-08A	Amendment/Modification of Summary of the Order creating demand under existing laws	Rule 142A(2)
15.	FORM GST DRC-09	Order for Recovery through Specified Officer under section 79	Rule 143
16.	FORM GST DRC-10 (substituted vide notification No. 40/2021-Central Tax, dated 29.12.2021 (w.e.f. 01.01.2022))	Notice for Auction of Goods under section 79(1)(b) of the Act or section 129 (6) of the Act	Rule 144(2) and 144A
17.	FORM GST DRC-11	Notice to successful bidder	Rule 144(5), 144A and 147(12)
18.	FORM GST DRC-12	Sale Certificate	Rule 144(5),144A and 147(12)
19.	FORM GST DRC-13	Notice to a third person under section 79(1) (c)	Rule 145(1)
20.	FORM GST DRC-14	Certificate of Payment to a Third Person	Rule 145(2)
21.	FORM GST DRC-15	Application before the Civil Court Requesting Execution for a Decree	Rule 146
22.	FORM GST DRC-16	Notice for Attachment and Sale of Immovable/Movable Goods/Shares under section 79	Rule 147(1) and Rule 151(1)
23.	FORM GST DRC-17	Notice for Auction of Immovable Property under Section 79(1) (d)	Rule 147(4)
24.	FORM GST DRC-18	Certificate action under clause (e) of sub-section (1) of section 79	Rule 155
25.	FORM GST DRC-19	Application to the Magistrate for Recovery as Fine	Rule 156
26.	FORM GST DRC-20	Application for Deferred Payment/ Payment in Instalments	Rule 158(1)

27.	FORM GST DRC-21	Order for acceptance/rejection of application for deferred payment /payment to instalments.	Rule 158(2)
28.	FORM GST DRC-22	Provisional attachment of property under section 83	Rule 159(1)
29.	FORM GST DRC-22A	Application for filing objection against provisional attachment of property	Rule 159(5)
30.	FORM GST DRC-23	Restoration of Provisionally attached property/bank account under section 83.	Rule 159(3), 159(5) and 159(6)
31.	FORM GST DRC-24	Intimation to Liquidator for recovery of amount	Rule 160
32.	FORM GST DRC-25 (as amended vide notification No. 26/2022-Central Tax, dated 26.12.2022)	Continuation of Recovery Proceedings.	Rule 161

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