

GST Update: CBIC Instruction on initiation of recovery proceedings under GST

- CA Sreenivasulu Thulasiram

Background:

The recovery provisions in the tax statutes are an important tool for the Revenue authorities to collect the outstanding dues in a fair and efficient manner.

The parliament while enacting the Central Goods and Services Tax has empowered the proper officers of the Central Board for Indirect Taxes and Customs (CBIC) with the powers to initiate the recovery proceedings against the taxable persons in pursuance of whom the orders for payment of dues have been passed under GST.

After carrying out the proceedings in a fair manner by following the principles of natural justice, the proper officers shall issue the summary of the order issued under the applicable sections, including under Section 73 [where there is no fraud/suppression/willful misstatement] /74 [where there is fraud/suppression/willful misstatement with intent to evade taxes] in **FORM GST DRC-07, specifying the amount of tax, interest and penalty.**

Meaning thereby, the amount mentioned in the summary order in FORM GST DRC-07 shall be paid by the taxable persons within the timelines mentioned in the said form.

Now, the question arises as to what is the timeline within which the tax dues shall be paid to the Government after receiving the FORM GST DRC-07 and what would be the consequences of non-payment of dues within the timelines?

Discussion on relevant provisions under GST:

In connection to this, we have Section 78 of the CGST Act 2017, which discusses about the initiation of recovery proceedings under GST:

The extract of the said section as follows;

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:

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.

<p>Normal scenario- Interest of revenue is not at stake:</p> <p>a) Who is the proper officer entitled to initiate the recovery proceedings under GST?</p> <p>b) Timelines within which the demand amount is payable before initiation of recovery proceedings under GST?</p>	<p>a) Jurisdictional Deputy or Assistant Commissioner of Central Tax or State Tax.</p> <p>b) Three months (3) from the date of service of the order.</p>
<p>Exceptional scenario- Interest of revenue is at stake: [Proviso to Sec. 78]</p> <p>a) Who is the proper officer entitled to initiate the recovery proceedings under GST?</p> <p>b) Timelines within which the demand amount is payable before initiation of recovery proceedings under GST?</p>	<p>a) Jurisdictional Principal Commissioner / Commissioner of Central Tax or State Tax.</p> <p>b) Less than three months (3) from the date of service of the order, in the following cases;</p> <ul style="list-style-type: none"> • Reasons to be recorded in writing; and • Expedient in the interest of revenue.

In the recent past, the proper officers have initiated the recovery proceedings before the specified period of three months from the date of service of order, even in the cases where the taxable person has not been specifically required by the proper officer, for reasons to be recorded in writing , for payment of such amount within a period less than the period of 3 months from the date of service of the order.

Thereby, to ensure the uniformity in the implementation of Section 78 of the CGST Act 2017, the provisions relating to initiation of recovery proceedings under GST, the CBIC through its powers conferred in Section 168 of the CGST Act 2017, has issued an

Instruction No. 01/2024-GST dated 30th May 2024, providing the guidelines for initiation of recovery proceedings before 3 months from the date of service of demand order.

Highlights of the aforesaid Instruction issued by CBIC:

- (a) The Jurisdictional Deputy or Assistant Commissioner of Central Tax, shall place the matter before the Jurisdictional Principal Commissioner/ Commissioner of Central Tax, in cases where they feel interest of revenue is at stake and justify such an action, along with reasons.
- (b) Thereupon, the Jurisdictional Principal Commissioner/ Commissioner of Central Tax, shall examine the reasons/ justification given by the Jurisdictional DC/AC at the earliest.
- (c) If the Jurisdictional Principal Commissioner/ Commissioner of Central Tax, is satisfied that it is expedient in the interest of revenue to ask the taxable person to pay the demanded amount before completion of 3 months from the date of service of order, (He must record the reasons in writing, as to why the recovery shall be made earlier than 3 months)
- (d) After recording such reasons in writing, Jurisdictional Principal Commissioner/ Commissioner of Central Tax, may issue the directions to the concerned taxable person to pay the said amount within the period specified by him in the said directions.
- (e) Copy of such directions shall also be sent to Jurisdictional DC/AC for information.
- (f) Further, the Jurisdictional Principal Commissioner/ Commissioner of Central Tax should provide the specific reasons for asking the taxable person for early payment clearly showcasing the circumstances which prompted such early action.
- (g) Such reasons could include high risk to revenue involved in waiting till the completion of 3 month period, the reasons could be any of the following;
 - Closure of business operations in near future;
 - Possibility of default due to
 - Declining financial conditions;
 - Impending insolvency;
 - Likely initiation of proceedings under Insolvency and Bankruptcy Act;

- (h) The reasons to believe for the apprehension of risk to revenue should be based on credible evidence, which may be kept on record to the extent possible.
- (i) While issuing any such directions, the Jurisdictional Principal Commissioner/ Commissioner of Central Tax must duly consider the
- financial health,
 - status of business operations,
 - infrastructure and credibility of the taxable person and
 - strike a balance between the interest of revenue and ease of doing business.
- (j) It is implicit that such directions for early payment of the confirmed demand **should not be issued in a mechanical manner**, and must be issued only in the cases where the interest of revenue is required to be safe guarded due to specific circumstances in the said case.

Important note:

Wherever such directions are issued by the jurisdictional Principal Commissioner/ Commissioner of Central Tax and where the taxable person fails to make payment of the said amount within the period specified in the said directions, the jurisdictional Deputy or Assistant Commissioner of Central Tax shall proceed to recover the said amount as per the procedure specified in subsection (1) of section 79 of CGST Act.

Consequences of failure to settle the tax dues within the timeliness:

The proper officers i.e., the Jurisdictional Deputy or Assistant Commissioner of Central Tax/ State Tax, shall proceed to recover the demand amount by following one or more modes, as laid down under Section 79 of the CGST Act 2017, which includes withholding the refund amounts, detaining and selling the goods belonging to the tax payer which is under the control of the officer etc.,

Conclusion: A very important instruction from CBIC in the era of reckless orders being passed by few field formations. It resonates with the ease of doing business objective of the Government and reiterates to the Department officials not to abuse their powers.

Suggestions or feedback can be sent to thulasiram@hnaindia.com

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