

Recovery of Tax

1. All tax administration occasionally comes across a situation where the tax dues are not paid correctly by the tax payers, most of the times inadvertently and sometimes deliberately. To minimise the inadvertent short payment of taxes the concept of 'Matching' of details of 'Outward supplies' of supplier with the details of 'Inward supplies' of recipient has been introduced in the GST Act. Moreover, the self-assessed tax has to be paid by due date prescribed under the GST Act and in case of any failure to pay the same by due date the Input Tax Credit will not be available to his customers and also the tax payer will not be able to file any return for further period. Effectually these provisions works as a Self-Policing system and takes care of any mis-match in the payment of taxes. However, despite these provisions there may arise some instances where the tax was not paid correctly. To deal with all such situations the provisions for Recovery are incorporated in any tax law. Accordingly, the GST Act contains elaborate provisions for recovery of tax under various situations, which can be broadly classified into following two categories: -

- i. Tax short paid or erroneously refunded or input tax

credit wrongly availed; and

- ii. Non-payment of self-assessed tax or amount collected as representing the Tax.

2. The incidence of the short payment of tax or erroneous refund or wrong availment of input tax credit may be because of an inadvertent bonafide mistake (Normal Cases) or it may be a deliberate attempt (Fraud Cases) to evade the tax. Since the nature of offence is totally different in both type of incidences, hence separate provisions for recovery of the tax and amount of penalty have been made to deal with any of such type of cases. Besides these there are provisions to encourage voluntary compliance such as no penalty or lesser penalty if the tax dues along with interest, are paid within specified time limit/incidence. The Table below gives a comprehensive chart of provisions for voluntary compliance:-

Sr. No.	Action by Tax Payer	Amount of Penalty payable—	Amount of Penalty payable—	Re- marks
		Normal Cases	Fraud Cases	
1.	Tax amount, along with interest, paid before issuance of Notice.	No Penalty and no Notice shall be issued.	15% of the Tax amount and no Notice shall be issued.	The penalty shall also be not chargeable

2.	Tax amount, along with interest, paid within 30 days of issuance of Notice.	No Penalty. All proceedings deemed to be concluded.	25% of the Tax amount. All proceedings deemed to be concluded.	in cases where the self-assessed tax or any amount collected
3.	Tax amount, along with interest, paid within 30 days of communication of Order.	10% of the Tax amount or Rs. 10,000/-, whichever is higher	50% of the Tax amount. All proceedings deemed to be concluded.	as tax is paid (with interest) within 30 days from the due date of payment.
4.	Tax amount, along with interest, paid after 30 days of communication of Order.	10% of the Tax amount or Rs. 10,000/-, whichever is higher	100% of the Tax amount.	

3. As can be seen from the foregoing para that for all types of incidences of short payment or erroneous refund or wrong availment of Input Tax credit, there are incentive for the person who accepts his tax liability and readily discharge the same. The law provides an opportunity for payment of tax, interest and a Nil or nominal penalty (depending on nature of offence) before issuance of Notice and emphatically stipulates that in all such cases no Notice shall be issued and consequently there shall be no other consequences for

any of the default. However, this is not the end of the road and there is another chance to discharge tax and interest liability with Nil or nominal penalty (depending on nature of offence) within 30 days of issuance of the Notice and the law provides that all proceedings in respect of the said Notice shall be deemed to be concluded. If it becomes inevitable to issue a show cause notice and thereafter pass an Order, the GST Act ensures a timely completion of all these procedures by providing a fixed timeline for issuance of notice and order-as follows:-

Sr. No.	Nature of Case	Time for issuance of Notice	Time for issuance of Order
1.	Normal Cases	Within 2 years and 9 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from date of erroneous refund.	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from date of erroneous refund.

2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from date of erroneous refund.	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from date of erroneous refund.
3.	Any amount collected as tax but not paid	No time limit.	Within one year from the date of issue of notice.
4.	Non-payment of self-assessed tax	No need to issue a show cause notice. Recovery proceedings can be started directly. Penalty, @ 10% of the Tax amount or Rs. 10,000/-, whichever is higher, shall also be payable if the period of non-payment exceeds 30 days from the due date of payment of tax.	

The GST Act also ensures timely disposal of cases by further providing that if the Order is not issued within the stipulated time limit of three years or five years, as the case may be, the adjudication proceedings shall be deemed to be concluded. From all these provisions it is clear that the non-payment of self-assessed tax or the amount collected

as representing the tax has been treated differently than the other short payments and in case of these two the only opportunity for paying the same without incurring any penalty is if it is paid, with interest, within 30 days from the due date of payment.

4. All these provisions make it clear that there are sufficient opportunities to make amend and discharge the tax liability with nil or nominal penalties. However, there are disincentives also for the person who fails to utilise these beneficial provisions. Besides that, the law also provides that the Board may fix certain monetary limits for not filing an Appeal against any order. It means if any order is passed in favour of the assessee the department will not pursue the case further by filing Appeals if the amount involved is less than the specified limit. At present, under the existing laws, the monetary limits for not filing an appeal to various judicial forums are follows: -

- i. Tribunal- Rs. 10 Lakhs
- ii. High Courts- Rs. 20 Lakhs and
- iii. Supreme Court- Rs. 25 Lakhs

5. The recovery proceedings are final step towards realisation of any tax or amount, which has been confirmed as payable after following the due process of adjudication by the proper officer. Therefore, if the tax dues and other amounts remain unpaid, despite all these beneficial provisions, and the tax payer fails to pay the dues after the orders are passed and statutory limit of 3 months is over then the proper

officer may initiate recovery proceedings. These recovery provisions under the CGST Act, 2017 lays down a well-defined procedure which is as follows:-

- i. Any amount payable, in pursuance to any order passed in this matter, is required to be paid within 3 months from the date of receipt of order and the tax payer should pay the same within this time limit. However, it may be mentioned that in certain cases, considering the interest of revenue, this period of 3 months may be reduced.
- ii. If the payable amount is not paid within the specified time limit of 3 months then recovery proceedings shall be initiated and various actions may be taken by the recovery officer, for realisation of Government dues. These options for recovery of government dues includes deduction of money from any amount payable to such tax payer, by detaining and selling any goods, by directing any other person from whom the money is due to such person, attaching any moveable (Including Negotiable Instruments and Shares) and/or immovable property belonging to the defaulter etc.
- iii. However, considering various business aspects the provisions for payment of all such amounts, other than self-assessed tax, in instalments have also been made in the Act. A person can avail this benefit of payment in instalments, by making application to the Commissioner by specifying reasons for

such request. On receipt of such application the Commissioner may allow payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest. Here it may be noted that if there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.
