



CA Vishal Bhattad

# DEMAND & RECOVERY

## Proceeding in case where

Non-Payment of Tax | Short Payment of Tax | Erroneous Refund | Wrong - availment or utilisation of ITC

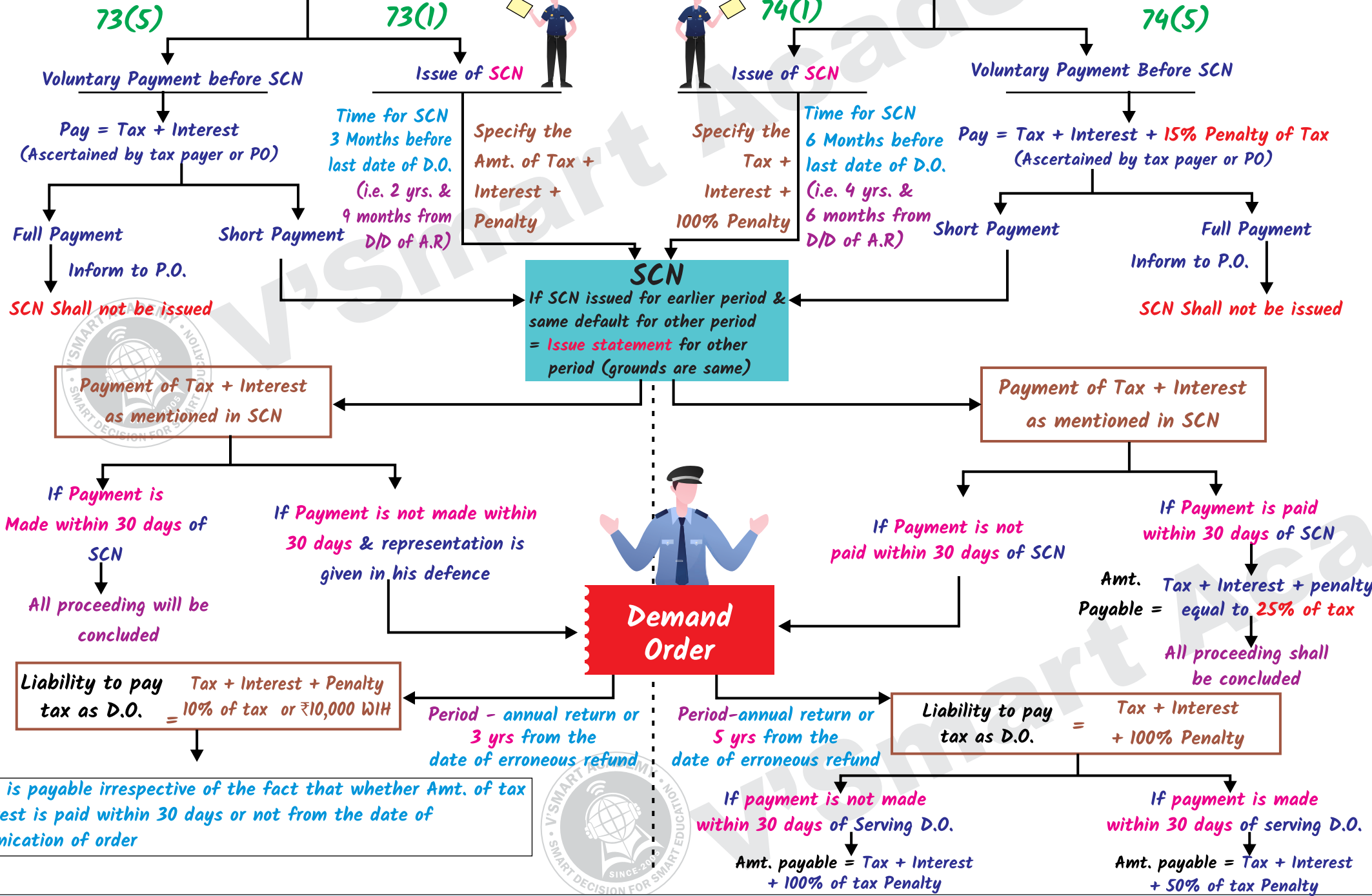
Excess collection of Tax

### Sec 76 Tax collected but not paid to Government

- 1 Tax collected from any person to be paid to the CG:- Every person collected tax and has not paid it to Govt.= shall immediately pay the said amount to Govt.. (Irrespective of whether relevant supplies are taxable or not).
- 2 Issue of SCN:- If above amount 76(1) has not been paid, PO = may serve a SCN = on the person liable to pay such amount Tax & Penalty, Note- There is no time limit for Serving SCN under this section
- 3 Demand Order:- After considering representation, PO shall determine the amount due from such person, & thereupon, such person shall pay the amount so determined.
- 4 Interest Payment:- Person shall pay interest @ 18% PA {uls 50}, from the date of collection - to the date of payment to Govt.
- 5 Opportunity of being heard:- Opportunity of hearing shall granted if request in written, received from such person)
- 6 Time limit for Issuance of Order:- Within one year- from the date of issue of SCN. {No time limit for issue of SCN}
- 7 Period of stay excluded:- Where issuance of order- stayed by an order of the Court/Appellate Tribunal stay period-excluded from period of 1 Year.
- 8 Order must be a speaking order:- PO = set out relevant facts & the basis of his decision.
- 9 Adjustment of amount payable u/s 76(1) & (3):- Amount paid to Govt. (Sub-sec.1/3)=adjusted against tax payable by person, i.r.t. supplies (sub-sec.1)
- 10 Surplus after adjustment:- Amount of surplus (after adj. above)= \*Credited to the Welfare Fund, (or) \*Refunded to the person, borne the incidence of such amount.
- 11 Refund :- Person- borne incidence of the amount= may apply for refund

### Sec 73 Cases other than fraud, wilful misstatement or suppression of facts (Bonafide intention)

### Sec 74 Cases by reason of fraud wilful misstatement or suppression of facts (malafide intention)



**Important Notes :-**

- i) all proceedings in respect of the said notice" shall not include proceedings under section 132
- ii) proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125 are deemed to be concluded.
- iii) For the purposes of this Act, the expression "suppression" shall mean
  - non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
  - failure to furnish any information on being asked for, in writing, by the proper officer.

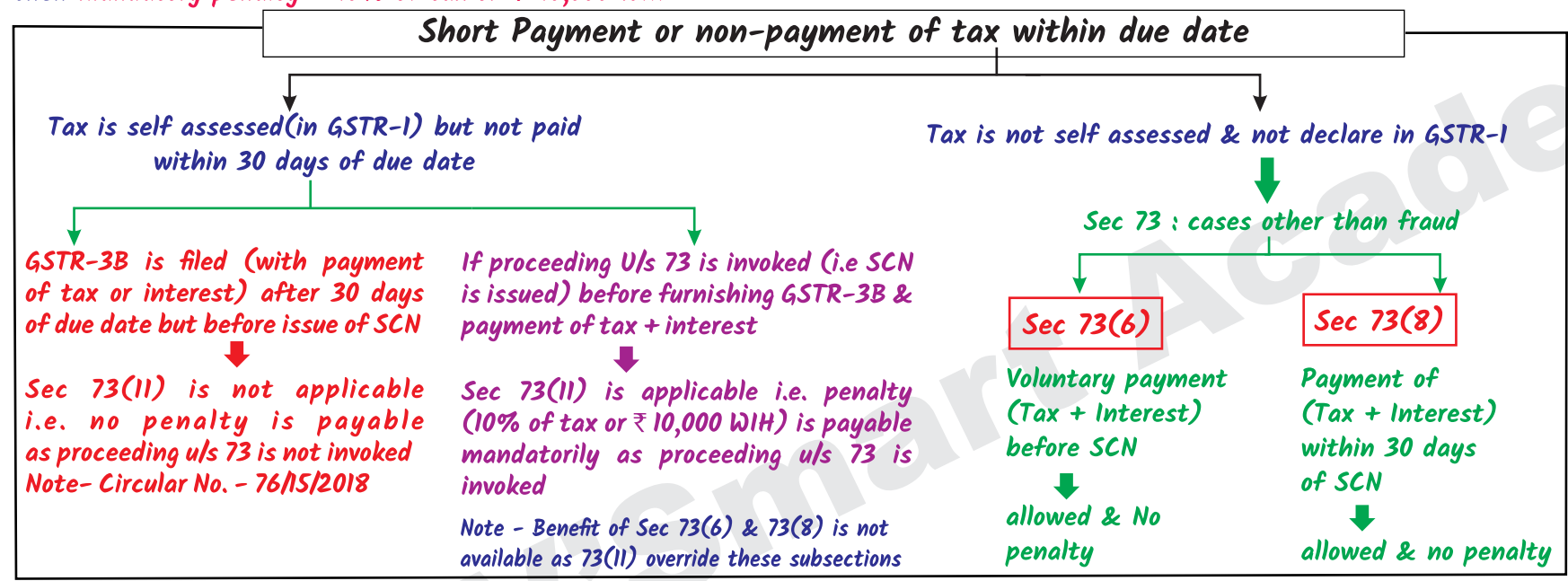
**Rule 88C: Manner of dealing with difference in liability in GSTR 1 & GSTR 3B: [To be inserted]**

- ➔ If tax payable in GSTR 1 exceeds in GSTR 3B, RP shall pay differential tax amount along with interest in prescribed form & also explain the difference within 7 days.
- ➔ If he failed to do so, the amount shall be recoverable as per Sec 79.

**Rule 88D:- Manner of dealing with difference in ITC available in autogenerated statement containing the details of ITC and that availed in return:-**

- (1) Intimation for difference in GSTR-3B & 2B:- If ITC availed by RP in GSTR-3B exceeds ITC available in GSTR-2B for a tax period(s) by prescribed % or amount, difference shall be intimated to him.
- (2) Time limit to pay excess ITC availed:- RP has to pay excess ITC availed + interest u/s 50 or explain reasons (reply) for such difference within 7 days.
- (3) Consequences for failure :- If intimated amount is not paid partly or wholly within time limit & reply is also not furnished or furnished reply is not acceptable, it will be demanded u/s 73 or 74.

**Sec 73(11)** :- Where amount of self-assessed tax is not paid within 30 days from the due date of payment of tax then mandatory penalty = 10% of tax or ₹ 10,000 WHH



**Sec 75 Determination of Tax (General prov.)**

1	Period of stay- If issuance of SCN/DO is stayed by Court/AT= excluded from period of SCN/DO for fraud/other than fraud.
2	If AA/AT concludes that charges of fraud are not sustainable- SCN u/s 74(1)= SCN u/s 73(1).
3	Order on direction of Court= such order shall be issued within 2 yr from the date of communication of direction.
4	Opportunity of being heard to aggrieved person.
5	Adjournment (for reasons in written)=Upto 3 times to a person
6	Order=Speaking (set out relevant facts & basis for his decisions)
7	Amount demanded in order shall not exceed amount in SCN
8	If AA/AT/court modifies amount of tax- modify Interest/penalty accordingly.
9	Interest= mandatory (even if not specified in SCN)
10	If no DO is issued within 3 years (other than fraud) or 5 years (in case of fraud) then proceeding deemed to be concluded
11	If appeal filed by dept., against decision of AT/AA/court= Period b/w date of decision of higher authority & lower authority= excluded from period of SCN/DO
12	If any amount of self assessed tax(in return)/amount of interest =remains unpaid=recovered u/s79.
13	If penalty u/s 73/74 imposed= no other penalty applies.

**Sec 77 - Tax wrongly collected & paid to CG/SG**

to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.  
**Note** : Similar provision are contained in Sec 19 of IGST Act

**Sec 78 & 79 - Initiation and mode of recovery**

**Sec 78** :- Any amount payable by a taxable person in order passed under this Act shall be paid within a period of **3 months** from the date of service of such order failing which recovery proceedings shall be initiated.

**Sec 79** :- Proper officer may recover the dues U/s 78 in following manner :-

- 1) Reduction of dues from the amount payable by the tax authorities to such person. **(Deduction from the refund payable)**
- 2) Recovery by way of **detaining / selling any goods** belonging to such person.
- 3) **Recovery from third person** from whom money is due or may become due to such person or recovery from person who holds or may subsequently hold money (banks) for such person.
- 4) **Distrain / Seize any movable / immovable property** belonging to such person until amount is paid & if the dues are not paid within 30 days then the said property is to be sold and the amount payable including cost of sale will be recovered from sale proceeds & balance is refundable.
- 5) Officer will **prepare the certificate of dues** & send it to the collector of district in which such person owns any property / resides / carries the business & the collector will recover such amount as arrears of land revenue.
- 6) By way of making **application to Appropriate Magistrate** who in turn shall proceed to recover the amount as if it was a fine imposed by him.
- 7) By **enforcing bond / instrument** executed under this act / Rules / Registration.

**Explanation**:- for the purpose of this sec, the word person shall include distinct persons as referred in sub sec (4) or as the case may be, sec 25(5).

**Sec 80 Payment of Tax & other amount in instalments:-**

- \* The provisions for payment of Tax & other amounts in Instalments= allowed **(other than self assessment tax)**
- \* This benefit can be availed= by making an application to the Commissioner by specifying reasons for such requests.
- \* Commissioner may- allow the payment in **instalments {Subject to maximum 24 monthly instalments + applicable interest u/s 50}**
- \* If default in payment of any instalment = whole outstanding balance payable on such date -become due and payable immediately, & shall be liable for recovery (without any further notice being served)

**Sec 81**

**Transfer of property to be void in certain cases:-**

**Where a person-** (after any amount has become due from him) (with the intention of defrauding the Govt. revenue)

creates a charge on or parts with the property belonging to him, or in his possession,

- ➔ by way of sale/ mortgage/ exchange/ any other mode of T/f,
- ➔ of any of his properties in favour of any other person,

**Such charge /transfer= Void, as against any claim i.r.o. any tax /other sum payable by said person.**

**Proviso-** Such charge/transfer= not be void, if made for Adequate Consideration, in good faith, &

- without notice of the pendency of such proceedings under this Act
- without notice of such tax/ other sum payable by the said person, or
- with the previous permission of the PO.

**Sec 82**

**Tax to be first charged on property:-**

Overriding any law for the time being in force, **(other than The Insolvency and Bankruptcy Code, 2016),**

- ➔ Any amount payable by a taxable person/ any other person,
- ➔ On account of tax/ interest/ penalty, which he is liable to pay to Govt.,

**shall be a First charge on the property, of such taxable/other person.**

**Sec 83**

**Provisional Attachment to protect revenue in certain cases:-**

1- **Circumstances:-** where, after the initiation of any proceeding under,

➔ Assessment ➔ Inspection, Search, Seizure and Arrest ➔ Demands and Recovery the Commissioner may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified of section 122(1A), in such manner as may be prescribed.

2 - **Provisional Attachment :-** Commissioner may (by order in writing) **attach provisionally any property + bank account of the taxable person.(to protect interest of Govt revenue)**

3- **Time period -** Every such provisional attachment= **cease to have effect, after the expiry of 1 year - from date of order under sub sec-1.**

**Sec 84**

**Continuation & Validation of certain recovery proceedings:-**

\* Where any notice of demand = served upon any taxable/ other person, & i.r.o. "Govt. dues" = any appeal/ revision application is filed / any other proceedings is initiated, i.r.o. Govt. dues, Then-

a) Where such dues Enhanced	= Commissioner shall serve another notice, of demand i.r.o. the amount, by which such Govt. dues are enhanced	= Any recovery proceedings i.r.t. such dues, covered by notice before the disposal of such appeal etc, may be continued from the stage at which such proceedings stood immediately before such disposal. (Without serving fresh notice of demand)
b) Where such dues Reduced	= Commissioner shall give Intimation of such reduction to him & to appropriate authority with whom recovery proceedings is pending	= Any recovery proceedings initiated on the basis of demand served upon him, before the disposal of such appeal, etc, may be continued i.r.t. the amount so reduced, from the stage at which such proceedings stood immediately before such disposal. (Without serving fresh notice of demand)