DETERMINATION OF TAX & ADJUDICATION OF DEMAND BY PROPER OFFICER – SECTION 74 OF CGST ACT, 2017

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Provisions in respect of raising show cause notice **('SCN')** demanding tax, interest and penalty have been made in section 74 of **Central Goods and Services Tax Act, 2017** **('CGST Act, 2017')** in case where there is charge of suppression of facts, wilful mis-statement or fraud.

Suppression of Facts

These terms are not defined in the Goods and Service Tax, however the term ***'suppression'*** has been defined in ***Explanation 2 of Section 74 of the CGST Act, 2017*** as 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 thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer*.

As per the above definition suppression cover the following

> ***i. Non-declaration of facts or information in return***, statement, report or any other documents as required under this act.
>
> ***ii. Failure to furnish any information asked for***, in writing, by the proper officer.

Suppression means not providing information which the person is legally required to state, but is intentionally or deliberately not stated. Mere omissions to give correct information did not constitute suppression unless that omission was made wilfully in order to evade duty. Suppression would mean failure to disclose full and true information with the intent to evade payment of duty.

Wilful Misstatement

Wilful misstatement implies that there is a statement but it does not convey the information in a true or fair manner and is likely to be misinterpreted by the person using such statement. A false statement becomes 'wilful' if it is deliberate or intentional. It is not wilful if the statement is accidental or inadvertent. A statement will not be misstatement only because full facts were not disclosed. Wilful means with intent to evade duty.

Fraud

The term fraud has not been defined in the Act. Basic element of fraud is deceit. Section 17 of the Contract Act states that fraud means making a suggestion, as a fact, which the person does not believe it to be true. Fraud also means active concealment of fact.

Determination of tax and adjudication of demand by Proper Officer under Section 74 of CGST Act, 2017 (in case of charge of fraud or any wilful-misstatement or suppression of facts).

Provisions in respect of raising SCN demanding tax, interest and penalty have been made in section 74 of CGST Act, 2017 in case where there is suppression of facts, wilful mis-statement or fraud. Section 74 of CGST Act, 2017, provides for 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 wilful-misstatement or suppression of facts.

This section provides that in cases of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised, for reasons of fraud or willful misstatement or suppression of facts, **the adjudication order will be issued within five years from the due date of filing of annual return for the year to which the discrepancy is noticed.** Further, the **show cause notice is required to be issued at least six months prior to the time limit**. This section also provides that such notice need not be issued if tax along with interest and **penalty equal to fifteen percent (15%) of tax is paid before issue of such notice**. This section also provides that where any person chargeable with tax pays the tax along with interest and **penalty equal to twenty-five (25%) percent of tax within thirty days** of issue of show cause notice, all proceedings in respect of the notice shall be deemed to be concluded. This section also provides that where any person chargeable with tax pays the tax along with interest and **penalty equal to fifty percent (50%) of tax within 30 days** of communication of order, all proceedings in respect of the notice shall be deemed to be concluded.

The steps for demand under Section 74 of the CGST Act, 2017 are summarised as under:

1. First, it is to be determined by the Proper Office in his opinion whether the tax not/short paid etc. is for reason by fraud, wilful misstatement, suppression of fact.

2. If answer to question number 1 is affirmative, the Proper Officer shall proceed under Section 74 of the CGST Act, 2017, else under Sec 73 of this Act.

3. Pre-SCN intimation to the defaulting taxable person to reduce litigation. The Proper Officer shall ascertain and compute the details of tax, interest and penalty payable and also communicate the same to the defaulting tax payer, in **Part A of Form GST DRC-01A**. ***[Rule 142(1A) of the CGST Rules, 2017].***

4. A taxpayer, on receipt of intimation in **FORM DRC-01A**, may use the second part of the said form i.e. **Part B**, to communicate to the officer, if he (taxable person) has made whole or part payment of the ascertained liability, or if the liability is not acceptable by him.

5. In case the taxable person pays the full amount with interest under section 50 and a ***penalty equal to 15% of tax*** and informs the Proper Officer, **the proceedings under Section 74(1) shall stand concluded and there would be no need for issue of SCN.**

6. When the amount paid as per the ascertainment of the assessee falls short, the proper officer shall issue a SCN for the amount of shortfall under Section 74(1) of the CGST Act, 2017. However, the provision of pre-notice is optional *e.f. 15-10-2020* and *not mandatory.*

7. Thereafter, the Proper office shall issue a notice under section 74(1) in the following situation involving payment of tax has arisen in cases of ***fraud, wilful misstatement or suppression of facts***–

- ***Tax not paid; or***
- ***Tax short paid; or***
- ***Tax erroneously refunded; or***

- ***Input tax credit wrongly availed or utilised.***

8. The notice under section 74(1) of the CGST Act, 2017 shall be in **Form GST DRC-01** ***[Rule 142(1)(a) of CGST Rules, 2017].***

9. The proper office may issue a statement under section 74(3) of the CGST Act, 2017 in lieu of SCN for tax periods other than covered in earlier SCN, in **Form GST DRC-02** ***[Rule 142(1)(b) of CGST Rules, 2017].*** The service of **such statement shall be deemed to be service of SCN u/s 73 (1)** ***[not a SCN u/s 74(1)]*** on the person chargeable with tax subject to conditions that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under section 74(1) are the same as are mentioned in the earlier notice.

10. Where the tax payer makes the payment of tax along with interest and a ***penalty equal to 25% of tax*** within 30 days of issuance of SCN and intimates the proper officer of such payment in **FORM GST DRC-03**, the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice and subsequently no penalty shall be payable. ***[Sub-section 8 of Section 74 & Rule 142(3)].***

11. Where the person files a reply or representation, the proper officer after considering the representation, shall issue an order in **FORM GST DRC-06**, consisting of the amount of tax, interest and penalty ***[Sub-section 9 of Section 74 & Rule 142(4)].***

12. The amount of penalty shall be 100% equal to tax ***(Sub-section 9 of Section 74).*** **However, if the taxable person pays tax, interest and 50% penalty within 30 days of communication of order, balance 50% penalty stand waived-Section 74(11) of the CGST Act, 2017** ***(Sub-section 11 of Section 74).***

13. A summary of such order 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. Such summary of order in **FORM GST DRC-07** shall be treated as a notice for recovery. ***[Rule 142(5) & (6)].***

14. Time limit for issue of the determination order: As per **Section 74(10)**, the Proper Officer is required to pass the order **within five years** from:

a. the due date of filing of Annual Return under Section 44 for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates or

b. date of erroneous refund.

15. Time limit for issue of SCN: The Proper Officer is required to issue notice at least ***six months*** prior to the time limit specified under Section 74(10) for issuance of an order. ***[Sub-section 2 of Section 74].***

Pre-SCN intimation to the defaulting taxable person to reduce litigation: –

[Taxable Person can pay tax with ***15% of tax as penalty*** on own before SCN, or after receiving pre-notice communication]

Text of statutory provisions-

"(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable thereon under section 50 and a ***penalty to fifteen per cent. of such tax*** *on the basis*

of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable."

Provision for pre-notice consultation has been made in section 28(1) of Custom Act and similar provision has been made in CGST Act, 2017 also. This provision of pre-notice communication has been incorporated to promote voluntary compliance and reduce litigation. However, the provision of pre-notice is optional *w.e.f. 15-10-2020* and *not mandatory* and hence is not likely to be used much by department.

The provision of pre-notice communication has been made to enable the taxable person to make the payment on *own* before receipt of proper SCN. Sub-section 5 of section 74 of the CGST Act, 2017 provides that if any person chargeable with tax wants to pay the amount of tax along with interest under section 50 on his own ascertainment of such tax, or the tax as ascertained by the proper office, then he can deposit tax along with interest and inform the proper office in writing of such payment. The basis of payment must be:

- *Either on the basis of assessee's own ascertainment of tax, or*
- *On the basis of tax ascertained by the proper officer.*

This payment can be made on *own* or on the *basis of communication made by proper officer under Rule 142(1A) of CGST Rules, 2017 (pre-notice communication)*. The proper officer may, before issue of SCN under section u/s 74(1), communicate details of tax, interest and penalty ascertained by him in **Part A of Form GST DRC-01A**.

Text of Rule 142(1A) of CGST Rules, 2017-

*"(1A) The proper office may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **PART A of FORM GST DRC-01A**."*

The taxable person shall inform department in **Form GST DRC-03**. On receipt of such information, the proper officer shall issue an acknowledgement for accepting the payment made by the said person in **Form GST DRC-04** ***[Rule 142(2) of the CGST Rules, 2017]*** and shall not serve any notice or statement with respect to the tax so paid. The proper office, on receipt of such information, shall not serve any SCN in respect of the tax so paid or any penalty leviable under the provisions of CGST Act, 2017 or the rules made thereunder ***[Section 74(6) of the CGST Act, 2017]***.

Text of Rule 142(2) of CGST Rules, 2017-

*"(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgment, accepting the payment made by the said person in **FORM GST DRC-04**."*

Please note that the word *'shall not serve SCN'* under Section 74(6) of CGST Act, 2017 means it is a mandatory provision, so that the issue should be closed. However, it is to be noted that prosecution under section 132 of CGST Act, 2017 can continue, as Explanation (1)(i) to section 74 of CGST Act, 2017 provides that the expression *"all proceedings in respect of the said notice" shall not include proceedings under section 132."*

Further, the taxable person can make partial payment or make submission against proposed liability, he can make submission in **Part B of Form GST DRC-01A** ***[Rule 142(2A) of the CGST Rule, 2017]***.

Text of Rule 142(2A) of CGST Rules, 2017-

"(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in ***PART B of FORM GST DRC-01A****."*

Also, as per sub-section (7) of Section 74 of the CGST Act, 2017, where the proper officer is of opinion that the amount paid under section 74(5) falls short of the amount actually payable, he shall proceed to issue the notice (SCN) under section 74(1), in respect of such amount which falls short of the amount actually payable.

Issuance of SCN if pre-notice communication fails between taxable person and proper officer. [Section 74(1) of the CGST Act, 2017].

Text of statutory provisions-

"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.."

Section 74 of CGST Act, 2017 can be invoked or applied where it appears to the Proper Officer that following situation involving payment of tax has arisen ***in cases of fraud, wilful misstatement or suppression of facts***–

- ***Tax not paid; or***
- ***Tax short paid; or***
- ***Tax erroneously refunded; or***
- ***Input tax credit wrongly availed or utilised.***

The notice under section 74(1) of the CGST Act, 2017 shall be in **Form GST DRC-01** ***[Rule 142(1)(a) of CGST Rules, 2017].***

Text of Rule 142(1)(a) of CGST Rules, 2017-

"(1) The proper office shall, along with the-

> *(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in* ***FORM GST DRC-01****.*
>
> *(b) XXX"*

It is to be noted that section 74 of the CGST Act, 2017 also applies for recovery of interest payable which is not paid or partly paid or interest erroneously refunded. But **interest cannot be demanded by issuing notice under section 50 of CGST Act, 2017**. Form GST DRC-01 notice is required to be served with notice issued under section 52, 73, 74, 76, 122,123,124,125,127,129 or 130 of CGST Act, 2017. This does not cover notice under section 50 of CGST Act, 2017. Hence, for demand of interest, notice should be issued under GST DRC-07, as per rule 142(5) of CGST Rules, 2107-***Rajkamal Builder Infrastructure v. UOI*** ***(2021) 127 taxman.com 150 (Guj HC).***

Time Limit for issuance of SCN [Section 74(2) of the CGST Act, 2017].

The notice required to be issued under section 74(1) shall be issued by proper officer as per time limit given in sub-section (10) i.e., **six months before issuance of the time limit for issuance of order.** The proper officer shall issue show cause notice at least 6 months prior to the time limit of 5 years for issuance of order i.e.

- Before completion of 5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to, or
- Within 5 years from the date of erroneous refund, as the case may be.

Statement instead of SCN, if SCN on same grounds was issued for earlier period [Section 74(3) & (4) of the CGST Act, 2017].

Text of statutory provisions-

"(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of Section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for period other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."

Where a SCN has been issued for any earlier period under section 74(1) of the CGST Act 2017, the proper office may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under earlier SCN, on the person chargeable with tax. The service of **such statement shall be deemed to be service of SCN u/s 73 (1)** on the person chargeable with tax subject to conditions that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under section 74(1) are the same as are mentioned in the earlier notice. **Please note that the specific provision has been as once SCN charging suppression or fraud or wilful misstatement has been issued, such charge cannot be sustained for later period, even if issue is same.**

The statement under section 74(3) of the CGST Act, 2017 shall be in **Form GST DRC-02** ***[Rule 142(1)(b) of CGST Rules, 2017].*** This provision has been enabled only to save paper work at department, where SCN on same grounds was issued for earlier period.

Text of Rule 142(1)(b) of CGST Rules, 2017-

"(1) The proper office shall, along with the-

(a) XXX.

*(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable."*

25% Penalty if tax with interest paid within 30 days from issue of SCN [Section 74(8) of CGST Act, 2018].

Text of statutory provisions-

"(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded."

Where any person chargeable with tax under section 74(1), pays the tax along with interest payable u/s 50 and 25% of tax as penalty within 30 days of issuance of SCN, all the proceedings in respect of said tax as contained in show cause notice will be deemed to be concluded. However, it is to be noted that prosecution under section 132 of CGST Act, 2017 can continue, as ***Explanation (1)(i) to section 74*** of CGST Act, 2017 provides that the expression ***"all proceedings in respect of the said notice" shall not include proceedings under section 132."***

Further the taxable person shall inform department about such payment in **Form GST DRC-03**. The proper office shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice ***[Rule 142(3) of the CGST Rule, 2017].***

Text of Rule 142(3) of CGST Rules, 2017-

*"(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of Section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice."*

Demand order with maximum 100% penalty under section 74(9) of the CGST Act, 2017.

Text of statutory provisions-

"(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty due from such person and issue an order."

This sub-section provides for determination of demand and issuance of order for determining the amount of tax, interest and penalty. However, such an order should be issued after considering the representation. As a principle of natural justice, an opportunity of personal hearing should be provided before issuance of an order to a taxable person. However, no such opportunity needs to be provided before issuance of SCN.

The proper officer can levy **a penalty equal to tax**, due from such person and issue and order. **There is no discretion to reduce penalty in case of fraud, suppression of facts and wilful misstatement. However, if the taxable person pays tax, interest and 50% penalty within 30 days of communication of order, balance 50% penalty stand waived-Section 74(11) of the CGST Act, 2017**.

The representation of taxable person shall be in **FORM GST DRC-06 [Rule 142(4) of the CGST Rule, 2017].**

Text of Rule 142(4) of CGST Rules, 2017-

"(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in ***FORM GST DRC-06****."*

A summary of such order 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. Such summary of order shall be treated as a notice for recovery. **[Rule 142(5) & (6) of the CGST Rule, 2017].**

Text of Rule 142(5) & (6) of CGST Rules, 2017-

"(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery."

Time Limit for issue of demand order [Section 74(10) of the CGST Act, 2017].

Text of statutory provisions-

"(10) The proper officer shall issue the order under sub-section (9) within five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund."

The proper officer shall issue an order within

- 5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to, or
- within 5 years from the date of erroneous refund, as the case may be.

It is to be noted that in case the proceedings were started under 74 of the CGST Act, 2017, but no order was issued within the prescribed time period of 5 years of date of filing of annual return of relevant year, the proceedings will come to an end due to reason of expiry of limitation period. Any order issued after the expiry of limitation period of 5 years will be treated as defective order thus ineffective.

Normally, due date for filing return is nine months from close of financial year i.e. 31st December. However, in initial stages of GST, the due dates were extended as follows-

Sr No.	*Period*	*Last date to file Annual Return*
1.	FY 2017-18	5th and 7th February, 2020 **(Notification No. 06/2020-Central Tax) dated 03.02.2020**
2.	FY 2018-19	31st December, 2020 (Notification No. 80/2020-Central Tax) dated 28.10.2020
3.	FY 2019-20	31st March, 2021 (Notification No. 04/2021-Central Tax) dated 28.02.2021

These dates should be considered for calculating period of 5 years for issuing SCN and confirming Demand. ***CBI&C Instruction No. 2/2021-GST-Investigation dated 22-09-2021.***

Deemed conclusion of proceedings with 50% penalty [Section 74(11) of the CGST Act, 2017].

Text of statutory provisions-

"(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceeding in respect of said notice shall be deemed to be concluded."

Sub-section (11) of Section 74 of the CGST Act, 2017 provides for deemed conclusion of proceedings under section 74 of CGST Act, 2017, if following conditions are satisfied:

- Order is issued and served under section 74(9)of CGST Act, 2017.
- The person pays tax, interest and penalty equivalent to 50% of the tax within 30 days of communication of order.

Comparative summary of the penalty payable under Section 73 and Section 74 of the CGST Act, 2017.

The amount of penalty payable under the two sections is summarised as under:

Sr. no	**Stage of payment**	**Section 73**	**Section 74**
1.	Tax and interest paid before issue of SCN	No Penalty	Penalty equal to 15% of amount
2.	Tax and interest paid within 30 days after issue of SCN	No Penalty	Penalty equal to 25% of amount
3.	Tax and interest paid within 30 days of communication of adjudication order	Penalty equal to 10% of tax amount or Rs, 10,000 whichever is higher	Penalty equal to 50% of amount

4.	**Maximum Penalty:** in any other case	Penalty equal to 10% of tax amount or Rs, 10,000 whichever is higher	Penalty equal to 100% o amount

Seizure and confiscation of goods and conveyances in transit (under section 129 and 130 of CGST Act, 2017) is a separate proceeding from the recovery of tax [Explanation (1)(ii) to section 74 of the CGST Act, 2017].

The Central Government has brought into effect the provisions of Finance Act, 2021 effective from 1st January, 2022. The Finance Act, 2021 has amended section 74 of the CGST Act, 2017 by amending clause (ii) of explanation (i) as follows:

"In section 74 of the Central Goods and Service Tax Act, in Explanation 1, in clause (ii), for the words and figures sections 122, 125, 129 and 130, the words and figures sections 122 and 125 shall be substituted."

The said amendment was made effective ***w.e.f. 01.01.2022 vide*** ***Notification No. 39/2021-Central Tax, dated 21.12.2021*****.** The objective of this amendment is to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.

By virtue of the above amendment, there will be 'separate recovery proceedings' for the following two sections:

Section 129 – Detention seizure and release of goods and conveyance in transit

Section 130 – Confiscation of goods or conveyance and levy of penalty.

Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 (Determination of tax when no fraud or suppression) or section 74 (Determination of tax when there is fraud or suppression), the proceedings against all the persons liable to pay penalty under section 122 (penalty for certain offences) and 125

(general penalty) are deemed to be concluded- ***Explanation (1)(ii) to section 74 of the CGST Act, 2017 as amended vide Section 113 of Finance Act, 2021 w.e.f., 01.01.2022.***

Thus, once demand is confirmed under section 73 or 74 of the CGST Act, 2017, further penalty under section 122 and 125 cannot be imposed. However, proceedings under section 129 (detention, seizure and release of goods and conveyances and levy of penalty) can continue. A notice even for penalty or late fee or co-noticees cannot be issued under section 122 and 125 of CGST Act, 2017.

Before the aforesaid amendment, the wording in Explanation (1)(ii) to section 74 of the CGST Act, 2017 includes sections 122, 125, 129 and 130. By the aforesaid amendment, reference to section 129 (detention, seizure and release of goods and conveyances in transit) and section 130 (confiscation of goods or conveyances and levy of penalty) have been omitted as these provisions are being made as stand-alone and independent provisions.

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