



# Lawgics

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## Section 74 of CGST Act, 2017 read with Rule 142

### 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 wilful-misstatement or suppression of facts.**

Section 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.
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### **Rule 142: Notice and order for demand of amounts payable under the Act**

Rule 142(1)	The proper officer shall serve, 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) 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.
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Rule 142(1A)	The proper officer 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 said officer, in Part A of FORM GST DRC-01A.
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Section 74(1) read with Rule 142(1) & 142(1A) <b>Interpretation</b>	<b><u>Need for demand &amp; recovery of taxes</u></b> Once a person is registered under GST, then he is expected to discharge liability as per rules. In case, he does not discharge the liability, then a question arises whether he is intentionally evading taxes or unknowingly paid short tax, or not paid tax, claimed excess ITC etc., because then as per procedure, such short paid tax or unpaid tax or excess claimed ITC or erroneously claimed refund can be recovered from such person along with interest and penalty in accordance with provisions of law. Where it appears to the proper officer that: <ul style="list-style-type: none"><li>• <u>any tax</u> has <b>not been paid</b> or <b>short paid</b> or <b>erroneously refunded</b>, or</li><li>• where <u>input tax credit</u> has been <b>wrongly availed</b> or <b>utilised</b></li></ul> by <u>reason of fraud</u> or <u>any wilful-misstatement</u> or <u>suppression of facts</u> to <u>evade tax</u> , then he shall serve notice in DRC-01 on concerned person requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable @18% thereon under section 50 and a penalty equivalent to the tax specified in the notice. The proper officer may communicate the details of any tax, interest and penalty as ascertained in Part A of DRC-01A, before service of notice in DRC-01.
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Section 74(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
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	wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
Section 74(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 periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.
Section 74(3) & 74(4) <b>Interpretation</b>	<b><u>Issue of statement in DRC-02 after notice has been issued in DRC-01</u></b> Where the notice has already been issued in DRC-01, the proper officer may serve a statement in DRC-02 specifying therein the details of the amount payable for <u>some other tax period</u> which has not been covered in DRC-01 and service of such a statement would be deemed to be service of notice as issued in DRC-01. Such statement may be issued only if the grounds relied upon are same as mentioned in the earlier notice, <b>except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax.</b> This provision has been enabled only to save paper work at department, where SCN on same grounds was issued for earlier period.
Section 74(5)	The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent 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.
Section 74(6)	The proper officer, on receipt of such information, shall not serve any notice under subsection (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
Section 74(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.
Rule 142(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 acknowledgement, accepting the payment made by the said person in FORM GST DRC- 04.
Rule 142(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.
Section 74(5), 74(6), 74(7) read with Rule 142(2) & 142(2A) <b>Interpretation</b>	<b><u>Payment of Tax before issuance of Notice in DRC-01</u></b> The person chargeable with tax can pay the tax, interest and a penalty equivalent to 15% of such tax, voluntarily in DRC-03, 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. In such a case, the proper officer shall issue an acknowledgement in DRC-04 accepting the payment made by the said person and will not issue notice in DRC-01.  However, when the person has made partial payment of the amount communicated to him in DRC-01A or desires to file any submissions against the proposed liability, he may make such submission in Part B of DRC-01A. Of course, in case of short payment against amount actually payable, the proper officer shall proceed to issue the notice in DRC-01 against such short payment.
Section 74(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.
Rule 142(3)	Where the person chargeable with tax makes payment of tax and interest under subsection (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 fourteen days of detention or seizure of the goods and conveyance, 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.

Section 74(8) read with Rule 142(3) <b>Interpretation</b>	<p><b><u>Partial Waiver of Penalty</u></b></p> <p>If a person chargeable with tax makes the payment of tax, interest &amp; and a penalty equivalent to 25% of such tax in DRC-03 within 30 days from issue of notice in DRC-01, all proceedings in respect of the said notice shall be deemed to be concluded and the proper officer shall pass an order in DRC-05 concluding the proceedings in respect of the said notice.</p>
Section 74(9)	The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
Section 74(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 proceedings in respect of the said notice shall be deemed to be concluded.
Rule 142(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.
Rule 142(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 payable by the person chargeable with tax.
Rule 142(6)	The order referred to in sub-rule (5) shall be treated as the notice for recovery.
Rule 142(7)	Where a rectification of the order has been passed in accordance with the provisions of section 161 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
Section 74(9) & 74(11) read with Rule 142(4), 142(5), 142(6) & 142(7) <b>Interpretation</b>	<p><b><u>Adjudication Order</u></b></p> <p>In case the person chargeable with tax wants to make a representation in his case, then, he can file DRC-06 for such representation and the proper officer after considering such representation shall pass the summary order and determine the tax, interest and penalty in DRC-07. Such an order in DRC-07 would be considered as notice for recovery. In case of any discrepancy in the order in DRC-07, the proper officer can rectify such mistake in DRC-08 in accordance with law.</p> <p>Where any person pays the tax along with interest @ 18% and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.</p>
Section 74(2)	The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
Section 74(2) <b>Interpretation</b>	<p><b><u>Time limit for issue of notice u/s 73(1)</u></b></p> <p>The notice in DRC-01 shall be issued by proper officer as per time limit given u/s 79(10) i.e., 6 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 3 years for issuance of order i.e.</p> <ul style="list-style-type: none"> <li>• Before completion of 3 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</li> <li>• Within 3 years from the date of erroneous refund, as the case may be.</li> </ul> <p>Thus, the SCN is required to be issued at least six months prior to the time limit for issuance of adjudication order.</p>
Section 74(10)	The proper officer shall issue the order under sub-section (9) within a period of 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.
Section 74(10) <b>Interpretation</b>	<p><b><u>Time limit for issue of the determination order</u></b></p> <p>As per Section 73(10), the Proper Officer is required to pass the order within 5 years from:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Date of erroneous refund.</li> </ul>

Explanation	<p>1.—For the purposes of section 73 and this section,—</p> <p>(i) the expression — “all proceedings in respect of the said notice” shall not include proceedings under section 132;</p> <p>(ii) 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 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.</p> <p>2.—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.</p>
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**To Summarize:**

Provision of section 73 and 74 are almost similar **except applicability, limitation period and amount of penalty**. Provision has been made in such manner that at every stage opportunity is given to the taxable person to settle dispute by paying tax, interest and applicable penalty before passing order or after passing order. Action initiated under these sections may not always result in passing of order. After passing order, taxable person has option to make payment of dues within thirty days of service of order to avail waiver of 50 % penalty (if order is u/s 74). However, no such concession in amount of penalty admissible where order is passed u/s 73. Aggrieved taxable person has option either to file an application u/s 161 for rectification of error apparent on the face of record or to file appeal to the Appellate authority u/s 107 to redress the grievance within 3 months. Otherwise after 3 months, dues will be available for recovery and Proper officer will initiate recovery proceeding to recover dues.

**Comparison of penalty between Section 73 and 74**

No.	Taxpayer’s Action	Amount of Penalty Payable		Remarks
		Normal Cases u/73	Fraud cases u/s 74	
1	Tax Amount + Interest paid <b><u>BEFORE issue of Notice</u></b>	No Penalty and No Notice shall be issued	15% of tax amount payable and no notice shall be issued	The penalty shall not be chargeable in cases where the self assessed tax or any amount collected is paid with interest within 30 days from the due date of payment.
2	Tax Amount + Interest paid <b><u>within 30 days of issue of Notice</u></b>	No penalty and penalty proceeding deemed to be concluded	25% of the tax payable. All proceeding deemed to be concluded.	
3	Tax Amount + Interest paid <b><u>within 30 days of communication of order</u></b>	10% of tax payable or Rs. 10,000/- whichever is higher	50% of the tax payable. All proceeding deemed to be concluded.	
4	Tax Amount + Interest paid <b><u>after 30 days of communication of order</u></b>	10% of tax payable or Rs. 10,000/- whichever is higher	100% of the tax payable.	

**Comparison of Limitation Period between Section 73 and 74**

Nature of case	Time for issuance of notice	Time for issuance of order
<b>Normal case</b>	Within 2 years and 9 months from due date of filing of Annual return for the financial year to which demand pertains or from date of erroneous refund	Within 3 years from due date of filing of Annual return for the financial year to which demand pertains or from date of erroneous refund
<b>Fraud case</b>	Within 4 years and 6 months from due date of filing of Annual return for the financial year to which demand pertains or from date of erroneous refund	Within 5 years from due date of filing of Annual return for the financial year to which demand pertains or from date of erroneous refund

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