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Section 79(1) of CGST Act, 2017

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Section 79: Recovery of tax	
Section 79(1)	Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made there under is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—
Section 79(1) Interpretation	The proper officer can adopt one or more of the methods set out in section 79 for recovery of amounts payable by the defaulting person to the Government.
Section 79(1)(a)	the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer.
Rule 143	<u>Recovery by deduction from any money owed</u> Where any amount payable by a person (hereafter referred to in this rule as “the defaulter”) to the Government under any of the provisions of the Act or the rules made there under is not paid, the proper officer may require, in FORM GST DRC-09, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79. Explanation.-For the purposes of this rule, “specified officer” shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.
Section 79(1)(a) read with Rule 143 Interpretation	<u>Recovery through another officer if any money is owed to defaulter</u> If any amount/ money which is owed by the Government to defaulter, then the amount payable by the defaulter can be deducted out of the said amount due to defaulter. The deduction can be done by the proper officer himself if it is under his direct control or he may ask any other specified officer to do so. The proper officer shall specify the amount to be deducted to another specified officer in DRC- 09. “Specified officer” shall mean any officer of the : <ul style="list-style-type: none">• Central Government or• State Government or Government of a Union territory or• local authority,• or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority
Section 79(1)(b)	the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer
Rule 144	<u>Recovery by sale of goods under the control of proper officer</u> (1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on

the recovery process.

(2) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods to be sold and the purpose of sale.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC-12.

(6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

Section
79(1)(b)
read with
Rule 144

Interpretation

Recovery by selling of goods

There should be goods which are under the control of the proper officer or other specified officer. Such goods should belong to the person who is liable to pay any amount. The goods may be detained and sold by the proper officer or such other specified officer on request by the proper officer. Out of the realisation, the amount payable by defaulter shall be recovered along with the administrative expenditure incurred on the recovery process. The entire recovery process has been indicated in Rule 144. The notice for auction/e-auction of goods shall be given in DRC-10. The notice to successful bidder shall be given in DRC-11 requiring him to make the payment within 15 days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in DRC-12.

Section
79(1)(c)

(i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made there under shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or

	<p>to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;</p> <p>(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;</p>
Rule 145	<p><u>Recovery from a third person</u></p> <p>(1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as “the third person”), a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice.</p> <p>(2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.</p>
Section 79(1)(c) read with Rule 145 Interpretation	<p><u>Recovery from any other person</u></p> <p>The proper officer may recover amount due of the defaulter from the third person. The third person can be, the person who,</p> <ul style="list-style-type: none"> • has dues to be paid to the defaulter, or • an amount that may become due to the defaulter, or • holds money of the defaulter, or • who may subsequently hold money for or on account of the defaulter <p><u>Obligation of Third person to pay money</u></p> <p>A notice in DRC-13 has to be issued to the third person directing him to deposit the amount specified.</p> <ul style="list-style-type: none"> ▪ The person shall be bound to comply with such notice. In case where such notice is issued to a post office, banking company or an insurer, then, they should comply with such notice without being asked to produce any pass book, deposit receipt, policy or any other document for the purpose. ▪ If any person, to whom such notice is issued, fails to comply, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made there under shall follow. ▪ Such notice can be amended or revoked or time limit can be extended for making payment in the hands of the officers. ▪ In case where the third person makes payment in compliance of the notice, it shall be deemed the payment is made by the person in default and the certificate from the government in DRC-14 will constitute a good and sufficient discharge of the liability to the defaulter to the extent of the amount specified in the certificate in DRC-14. ▪ In case where the third person makes payment to the person in default even after service of notice, he shall be personally liable to the government to the extent of; <ul style="list-style-type: none"> ➤ Liability being discharged to the defaulter, or ➤ Liability of the defaulter for tax, interest & penalty, whichever is less. ▪ The amount directed to be paid in the notice shall be – <ul style="list-style-type: none"> ➤ Where the amount due/held by such other person is more than amount due by the defaulter – to the extent of amount due by the defaulter; ➤ Where the amount due/held by such other person is equal to or less than amount due by defaulter – whole of money due/held. <p><u>Discharge from Liability of paying money</u></p> <p>The third person shall not be personally liable, if he satisfies the officers issuing the notice that,</p> <ul style="list-style-type: none"> ▪ The money demanded or any part thereof was not due to the defaulter, or ▪ At the time the notice was served he did not hold any money on behalf of the defaulter, or ▪ No money was demanded nor likely to be due to the defaulter, or ▪ No money was likely to be held for or on account of such person.
Section 79(1)(d)	<p>the proper officer may, in accordance with the rules to be made in this behalf, detain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;</p>

Recovery by sale of movable or immovable property

(1) The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in FORM GST DRC- 16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

(2) The proper officer shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on written instructions from proper officer to that effect.

(3) Where the property subject to the attachment or distraint under sub-rule (1) is-

(a) an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;

(b) a movable property, the proper officer shall seize the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the proper officer himself or an officer authorised by him.

(4) The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in FORM GST DRC- 17 clearly indicating the property to be sold and the purpose of sale.

(5) Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

(6) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(7) The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (4):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(8) Where any claim is preferred or any objection is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the proper officer shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.

(9) The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distraint.

(10) Where, upon investigation, the proper officer is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distraint.

(11) Where the proper officer is satisfied that the property was, on the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the proper officer shall reject the claim and proceed with the process of sale through auction.

(12) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of such notice and after the said payment is

	<p>made, he shall issue a certificate in FORM GST DRC- 12 specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder:</p> <p>Provided that where the highest bid is made by more than one person and one of them is a co-owner of the property, he shall be deemed to be the successful bidder.</p> <p>(13) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom title in such property is transferred.</p> <p>(14) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer shall cancel the process of auction and release the goods.</p> <p>(15) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.</p>
<p>Section 79(1)(d) read with Rule 147 Interpretation</p>	<p><u>Collection by detention of any movable or immovable property</u></p> <p>The proper officer in accordance with the Rule 147 of the CGST Rules, 2017 may:</p> <ul style="list-style-type: none"> ▪ Prepare a list of movable and immovable property belonging to the defaulter and estimate their value as per the prevalent market price, and ▪ Issue an order of attachment or distraint and a notice for sale in DRC-16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due. ▪ The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in DRC- 17 clearly indicating the property to be sold and the purpose of sale. <p>Such detention of any movable or immovable property belonging to defaulter will be done till the amount payable is paid.</p> <p>If any part of the amount payable or cost of distress or keeping the property is not paid within 30 days from such distress, the proper officer may sell the property and with the proceeds he may adjust towards:</p> <ol style="list-style-type: none"> 1. amount payable 2. costs including the cost of sale remaining unpaid 3. After such adjustment, the remaining surplus shall be returned to the defaulter.
<p>Rule 154</p>	<p><u>Disposal of proceeds of sale of goods and movable or immovable property</u></p> <p>1) The amounts so realised from sale of goods or conveyance, movable or immovable property, for recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall,-</p> <p>(a) first, be appropriated against the administrative cost of the recovery process;</p> <p>(b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;</p> <p>(c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and</p> <p>(d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;</p> <p>(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with Fund;</p>
<p>Rule 154 Interpretation</p>	<p><u>Disposal of proceeds of sale of goods and movable or immovable property</u></p> <p>The amounts so realised from the sale of goods, movable or immovable property, for recovery of dues from a defaulter or for recovery of penalty payable for detention or seizure of goods/conveyance in transit shall,-</p> <ol style="list-style-type: none"> (a) first, be appropriated against the administrative cost of the recovery process, (b) next, be appropriated against the amount to be recovered; or the payment of the penalty payable for detention or seizure of goods/conveyance in transit, (c) next, be appropriated against any other amount due from the defaulter under CGST Act, IGST Act,

	<p>UTGST Act or SGST Act & rules made thereunder; and</p> <p>(d) any balance, be credited to the electronic cash ledger of the defaulter or shall be credited to the bank account of the person concerned.</p> <p>(e) When it is not possible to pay the balance within 6 months, such balance of sale proceeds shall be deposited with Consumer Welfare Fund.</p>
Rule 148	<p><u>Prohibition against bidding or purchase by officer</u></p> <p>No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.</p>
Rule 149	<p><u>Prohibition against sale on holidays</u></p> <p>No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.</p>
Rule 150	<p><u>Assistance by police</u></p> <p>The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.</p>
Section 79(1)(e)	<p>the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;</p>
Rule 155	<p><u>Recovery through land revenue authority</u></p> <p>Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.</p>
Section 79(1)(e) read with Rule 155 Interpretation	<p><u>Recovery through Land Revenue Authority</u></p> <p>Proper officer may prepare a certificate signed by him specifying the amount due from the defaulter. Such certificate issued in DRC-18 will be sent to the Collector of the District in which the defaulter:</p> <ul style="list-style-type: none"> • owns any property; or • resides; or • carries on his business. <p>The District Collector, on receipt of such certificate shall proceed to recover from such defaulter the amount specified in the certificate as if such amount is arrears of land revenue.</p>
Section 79(1)(f)	<p>Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.</p>
Rule 156	<p>Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub-section (1) of section 79 in FORM GST DRC- 19 to recover from the person concerned, the amount specified there under as if it were a fine imposed by him</p>
Section 79(1)(f) read with Rule 156 Interpretation	<p><u>Recovery through court</u></p> <p>This provision has overriding effect over Code of Criminal Procedure, 1973. In this case, the proper officer may file an application to the appropriate Magistrate in DRC- 19 who shall proceed to recover from the defaulter the amount specified in the application as if it is fine imposed by such Magistrate.</p>

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