



Lawgics

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Section 88 of CGST Act, 2017



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88. Liability in case of company in liquidation.

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Rule 160 –Recovery from company in liquidation

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

Our Interpretation

Section 88
read with
Rule 160

This section deals with the tax and other dues of a company in case it is being wound up or liquidated.

Every person appointed as liquidator needs to give intimation of his appointment to the Commissioner within **30 days** of his appointment.

Within **3 months** from the date of such intimation, the Commissioner, after making necessary enquiry or calling of information, will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company.

When a private company is not able to clear its dues for any period, whether **before or in the course of or after its liquidation**, then every person who was the director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues.

However, if any director proves to the satisfaction of the Commissioner that such non-recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director.

Section 88 provides that the provision must be made by liquidator for GST dues **‘then’ or ‘likely thereafter to become payable’**.

Rule 160 of CGST Rules, 2017 states that where a company is under liquidation, then the Commissioner shall notify the liquidator for recovery of any amount representing tax, interest, penalty or any amount due under the Act in **DRC-24**. This intimation must contain the following details:

1. Name of the company being liquidated
2. The GSTIN of the company being liquidated
3. Date of the letter
4. Period for which demand is being made
5. Demand Order No.
6. Reference to Liquidator’s letter intimating liquidation of the company
7. The actual amount or likely amount, the company owes to State/ Central Government in terms of tax, interest, penalty, other dues and total arrears thereof

Rule 160 aims to direct the liquidator, in DRC – 24 to make sufficient provision for discharge of current and anticipated liabilities before final winding up of the company.

This provision aims at directing the liquidator to make sufficient provision for the tax which is ‘due or is likely to be due’ under the Act, recoverable from company under liquidation. However, section 326 of the Companies Act, 2013 provides for preferential payments to be made first towards workmen’s dues and debts due to secured creditors and only thereafter, follow the sequence as prescribed in section 327 of Companies Act, 2013 which covers dues to Government in form of taxes, cesses and rates etc. However, reference to section 82 of CGST Act, 2017 would make it clear that dues are recoverable and a first charge on property of the person can be made, to recover the dues under this Act, only after fulfilling the preferential provisions as per Companies Act, 2013 read with Insolvency and Bankruptcy Code, 2016.

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