

RECOVERY AND GARNISHEE PROVISIONS UNDER GST



Section – 79 Recovery of Tax

Section 79 (1) Modes of recovery:

- a. Deduction out of money owed to the defaulter
- b. Detaining and selling the goods belonging to defaulter
- c. Recovery from any other person who owes money to the defaulter
- d. Collection by detention of any movable or immovable property belonging to defaulter
- e. Recovery through district collector
- f. Recovery through magistrate
- g. Recovery through execution of bond or instrument



(a) Deduction out of any money owed to defaulter

Some money which is being owed by the Government to defaulter should exist;

Any amount payable can be deducted out of the said amount due to defaulter;

Deduction can be done by the proper officer himself or he may authorize any other specified officer to do so.

The proper officer shall specify the amount so deducted in form [GST DRC- 09](#) as prescribed under [Rule 143](#) of [CGST Rules, 2017](#)



(b) Detention and selling of the goods belonging to defaulter

Goods which are under the control of the proper officer or other specified officer should exist.

Goods should belong to the person who is liable to pay any amount

Goods may be detained and sold by the proper officer or such other specified officer as authorized by the proper officer.

The amount payable by defaulter shall be recovered out of the realization.



In terms of **Rule 144** of **CGST Rules, 2017**, the goods should be sold through a process of auction including e-auction, for which a notice should be issued in **FORM GST DRC-10** indicating the goods to be sold and the purpose of sale. If the goods are perishable or hazardous in nature or the expenses of storing them is likely to exceed the value of such goods, then proper officer may sell them before 15 days.



Proper officer has to 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 possession of the said goods shall be transferred to the successful bidder and a certificate in **FORM GST DRC-12** shall be issued.



In case the defaulter pays the amount under recovery, including any expenses incurred on process of recovery, before the issue of notice issued in **FORM GST DRC-10** (Notice of Auction) then the proper officer shall cancel the process of auction and release the goods.



*(c) Recovery from other persons who
owes money to defaulter*

This will apply where any other person -
has to pay money to the defaulter;
is likely to pay money to the defaulter;
holds money for or on account of the
defaulter;
may subsequently hold money for or on
account of the defaulter.



Proper officer may issue notice in writing in **Form GST DRC-13** to such other person to pay to the credit of the Government forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held.



The following amounts shall be directed to be paid in the notice—

- 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.
- Such other persons to whom such notice is issued is bound to comply with such notice.



- In cases where such notice is issued to a post office, banking company or an insurer, they are required to comply with the same without insisting on production of any passbook, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like, though that might be the normal practice.



- If such person to whom such notice is issued, fails to comply with the notice, he shall be treated as defaulter to the extent of the amount mentioned in the notice and all other consequences under the law shall follow;
- Where the third person makes the payment of the amount specified in the notice in **FORM GST DRC-13**, then the proper officer is required to issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged.



- Such notice may be amended or revoked or time may be extended for making any payment;
- The payment made by such other person in accordance with the notice issued, shall be deemed to have made the payment on behalf of such defaulter and the amount credited to the government shall be deemed to constitute the discharge of liability of such defaulter to the extent of the payment made. As a result, no civil suit or other proceedings could be filed or initiated by the defaulter on the notice, who has complied with this provision.



- If such person makes the payment to defaulter instead of crediting the amount to the government, then such other person shall be personally liable to the Government to the extent of the amount due by the defaulter or amount discharged to the defaulter whichever is lower.
- Such person shall not be personally liable, if he is able to prove to the proper officer issuing the notice that

- money demanded or any part thereof was not due to the person in default or
- at the time of service of the notice he did not hold any money for or on account of the person in default,
- money was not demanded from him; or
- any part of the money demanded is not likely to become due to such other person or
- any part of the money will not likely be held for or on account of such person.



(d) From detention of any movable or immovable property

A proper officer in accordance with the Rule 147 of the CGST Rules framed for this purpose, may on authorization by competent authority, *inter alia*, do the following:

- prepare a list of movable and immovable property belonging to the defaulter,



- estimate their value as per the prevalent market price and issue attachment order 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.
- Such 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.



- Such detention of any movable or immovable property belonging to defaulter will be done till the amount payable is paid.
- 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:
 - amount payable; or
 - costs including the cost of sale remaining unpaid;
 - After such adjustment, the remaining surplus, if any, shall be returned to the defaulter.



(e) Recovery of dues with help of District Collector (DC)

- Proper officer may prepare a certificate signed by him specifying the amount due from the defaulter.
- Such certificate will be sent to the District Collector of the District in **FORM GST DRC-18** in where the defaulter.
 - owns any property; or
 - resides; or
 - carries on his business.



- 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.

*(f) Recovery of dues with help of
Magistrate:*

This provision has overriding effect over Code of Criminal Procedure (CrPC).

- In this case, the proper officer may file an application to the appropriate Magistrate.
- The Magistrate to whom application (in **FORM GST DRC- 19**) is made, shall proceed to recover from the defaulter the amount specified in the application as if it is fine imposed by such Magistrate.



(g) Recovery of dues by execution of decree

Rule 146 of **CGST Rules, 2017** provides for recovery through execution of decree.

- Amount should be payable to the defaulter
- In execution of decree of civil court for
- Payment of money,
- Sale in enforcement
- Proper officer to send request to court in writing
- Attached decree to be executed
- Net proceeds for settlement of amount recoverable to be credited to Government account.



(h) Recovery of dues from company under liquidation

Rule 160 of CGST Rules, 2017 provides for recovery of dues from company in liquidation as follows:

- The amount to be recovered should be from company under liquidation as per section 88 of CGST Act, 2017.
- Commissioner to notify the liquidator for any amount due



Recovery of penalty from sale (Rule 144A)

Rule 144A has been inserted w.e.f. 01.01.2022 vide Notification No. 40/2021-CT dated 20.12.2021 to provide for manner of recovery of penalty by sale of goods or conveyance detained or seized by the tax authorities while in transit. This rule stipulates that in the event of owner of goods or transporter of goods failing to pay the amount of penalty levied under section 129(1) of CGST Act, 2017 within 15 days of the communication of the order, the proper officer shall effect sale or disposal of the goods or conveyance detained or seized after preparing an inventory of the sale and determining the estimated market value of the subject goods or conveyance.



It may be noted that [section 129](#) is an over-riding provision providing for detention, seizure and release of goods and conveyance in transit.

It further provides for levy of penalty but only after issuing a notice of seven days and providing opportunity of being heard. The goods shall be released only after payment of penalty.

These goods shall be disposed off through a process of auction including e-auction. [Rule 144A](#) provides the manner of auction, timelines for billing, declaration of successful bidder, payment of bid amount and transfer of ownership to the successful bidder.

[Rule 144 A](#) does not apply in respect of perishable goods and goods of hazardous nature.



➤ **Garnishee Provision (Section 79(1)(c):**

Meaning:

A Garnishee is a third party who owes or holds money for the tax defaulter.

➤ **Provision:**

- The proper officer may issue a **notice to any person (the garnishee)** who owes money to the defaulter.
- That person is **directed to pay** the specified amount **directly to the Government**, instead of paying it to the defaulter.

FORM: DRC-13- Notice to a third person under section 79(1) (c)

➤ **Example:**

- Supplier "A" owes tax to the Government. "B" (A's customer) has
□ 5 lakh payable to "A".
- Officer issues a garnishee notice to "B"
→ "B" must pay □ 5 lakh (or part)
directly to the Government.

➤ **Legal Effect:**

Payment by the garnishee discharges his liability to the defaulter to that extent.

➤ **Payment in Installment (Section 80):**

This provision allows a taxable person who is unable to pay the full amount of tax, interest, penalty, or other dues in one go to request **payment in installments**, providing some financial relief while ensuring eventual recovery of government dues.



Payment in Installment (Section 80):

Aspect	Explanation
Who can apply	Any taxable person who owes an amount under the CGST Act (except self-assessed tax declared in returns).
Authority empowered	The Commissioner of GST
How to apply	The taxpayer must file an application to the Commissioner explaining reasons for seeking instalment facility.



Payment in Installment (Section 80):

Aspect	Explanation
Commissioner's discretion	The Commissioner may approve instalment payments for reasons recorded in writing , ensuring transparency
Maximum number of instalments	Not exceeding 24 monthly instalments (i.e., up to 2 years).
Interest applicability	The taxpayer must pay interest under Section 50 on the outstanding amount for the extended period.



Payment in Installment (Section 80):

Aspect	Explanation
Conditions and limitations	Payment in instalments is subject to prescribed rules and the Commissioner may impose specific conditions.
Default clause (Proviso)	If the taxpayer defaults on any instalment , then: <ul style="list-style-type: none">• The entire outstanding balance becomes immediately due, and• The amount is recoverable forthwith without any further notice.

Payment in Installment (Section 80):

Aspect	Explanation
Exclusion	Instalment facility cannot be granted for tax amounts self-assessed in GST returns (since those are voluntarily admitted liabilities).



➤ **Rule 86A: Conditions of use of amount available in electronic credit ledger:**

Authorities can block ITC in a taxpayer's electronic credit ledger if they have reasons to believe it was fraudulently availed or ineligible—such as invoices from fake suppliers, no actual goods/services, unpaid tax, or missing documents. The blocked ITC can't be used or refunded, but may be unblocked if conditions no longer exist.

The restriction automatically ends after one year.

➤ **Liability in Special Cases (Section 85-87 of CGST Act, 2017):**

SECTION 85

- **Situation:**

Transfer of business (whole or part) by sale, gift, lease, hire, etc.

- **Person Liable :**

- Transferor (original taxable person)
- Transferee (person acquiring business)

SECTION 85

- **Nature of Liability :**

Joint and several liability for tax,

Interest, or penalty due up to date of transfer

- **Scope :**

- Covers dues up to time of transfer
- Includes amounts determined after transfer but pertaining to pre-transfer period

SECTION 85

- **Compliance :**
 - Transferee must pay tax on supplies made from date of transfer
 - Must apply for amendment of GST registration within prescribed time

➤ **Liability in Special Cases (Section 85-87 of CGST Act, 2017):**

SECTION 86

- **Situation:**

Agency transactions — agent supplies or receives taxable goods on behalf of principal

- **Person Liable :**

- Agent
- Principal

SECTION 86

- **Nature of Liability :**

Joint and several liability for tax on goods supplied or received

- **Scope :**

- Applies to all taxable supplies or receipts made by the agent on behalf of the principal

- **Compliance:**

- Both parties are accountable for correct tax compliance and payment

➤ **Liability in Special Cases (Section 85-87 of CGST Act, 2017):**

SECTION 87

- **Situation:**

Amalgamation or merger of companies
(effective from an earlier date than
order)

- **Person Liable :**

- Amalgamating / merging companies
(each company separately)

SECTION 87

- **Nature of Liability :**

Each company liable separately for tax on inter-company supplies before effective date

- **Scope :**

- • Applies to period between effective date of merger and actual date of order
- Inter-company supplies during that period remain taxable

SECTION 87

- **Compliance :**
 - For GST, companies treated as distinct entities up to date of order.
 - GST registrations cancelled from the effective date of merger.

THANK YOU!



**B-216/217, Monalisa
Business Centre, Manjalpur,
Vadodara, Gujarat-390011**



**0265-2986115
9033088865**



info@saurabhdixit.in



www.saurabhdixit.in



**Saurabh Dixit
Advocate**