

GST Assessment, show cause notice & penalties provisions (Part 2)

taxguru.in/goods-and-service-tax/gst-assessment-show-notice-penalties-provisions-part-2.html

GST शास्त्र : Walk through assessment, show cause notice and penalties provisions (Part 2)

Introduction :

Amidst the crisis of Coronovirus, it is difficult to predict the lifting up of lockdown and life immediately after lockdown. We all hope that sooner life will be back to normal and safer. However, what we can possibly predict is that the future of GST will be of assessments, show cause notices and consequential penalties. One must understand the scope, legal validity of notices issued under specific sections.

This article is an attempt to decode some of the important provisions in this regard. **In Part 1, we have decoded some of the provisions.** In this Part, we will analyse few more provisions. Wherever necessary, provisions of the act have been reproduced.



Section 68/ Section 129/ Section 130 :

Section 68 : Inspection of goods in movement

As per section 68, person in charge of conveyance carrying on consignment of value exceeding specified limit (Rs. 50,000 for interstate / Rs. 1,00,000 for intra-state in Maharashtra) to carry invoice/ bill of supply/ delivery challan and e way bill as the case may

be. If such conveyance is intercepted, person in charge shall produce documents and allow the inspection of goods.

Section 129 : Detention, seizure and release of goods and conveyance in transit

As per section 129,

– Notwithstanding anything contained in this act, where person **transports any goods or stores any goods** while they are in transit

– in contravention of the provisions of this Act or the rules made thereunder

– all such goods and conveyance used as a means of transport carrying the said goods and documents relating to such goods and conveyance

– shall be liable to detention or seizure and shall be released on payment of amount prescribed as follows.

Owner comes forward	Amount
Yes	Taxable goods – Tax (+) penalty equal to 100% of tax payable Exempted goods – 2% of value of goods or Rs. 25,000/- whichever is less
No	Taxable goods – Tax (+) penalty equal to 50% of value of goods reduced by the tax amount paid thereon Exempted goods – 5% of value of goods or Rs. 25,000/- whichever is less

Or furnishing equivalent security

– As per section 129(5), on payment of amount as prescribed, all proceedings in respect of notice shall be deemed to be concluded.

– Section 129(6) provides time limit for payment of 14 days. If person transporting goods or the owner of goods fails to pay the amount as prescribed within 14 days, **further proceedings u/s 130 shall be initiated.**

Section 130 : Confiscation of goods or conveyances and levy of penalty

Notwithstanding anything contained in this Act, If any person

– **Supplies or receives** any goods in contravention of any provisions

– **Does not account for** any goods on which he is liable to pay tax

– **Supplies goods** liable to tax **without** having **applied for registration**

– Contravenes provision of the act **withan intent to evade tax**

– Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of the act and rules

– **All such goods and conveyance are liable to confiscation and person shall be liable to penalty u/s 122**

Analysis :

– In case of interception, person in charge shall produce documents as required and allow the inspection of goods.

– **Scope of Section 129 :**

Provision of section 129 shall attract where any person **transports any goods or stores any goods while they are in transit** in contravention of the provisions of the act or rules made thereunder.

In the opinion of author, it depicts that scope of the section is confined to abovementioned contravention and hence it cannot be invoked for other issues like undervaluation or wrong classification in the opinion of officer.

– **Invoking section 130 without following procedure u/s 129 :**

As per section 129(6), time limit of 14 days to pay tax & penalty is prescribed and on failure of such payment, section 130 can be invoked. However, it was observed that officers are invoking section 130 without following procedure u/s 129.

The contention by department is that section 129 and 130 both starts with “non obstante” clause i.e **“notwithstanding anything contained in this act.** Hence, section 130 overrides the provisions of section 129 due to which it is needless to invoke section 129 before initiating proceedings u/s 130.

However, in the opinion of author, in case of contraventions as prescribed in section 129, provision of section 129(6) must be adhered and time limit of 14 days for the payment of tax and penalty, as prescribed, shall be given. On failure of such payment only further action u/s 130 can be initiated.

– Minor penalty for minor discrepancies –

As per **circular no. 64/38/2018 – GST**, proceeding u/s 129 **may** not be initiated, ***inter alia***, in following situations :

1. Spelling mistakes in the name of the consignor or the consignee **but the GSTIN**, wherever applicable, **is correct**;

2. Error in the pin-code but the address of the consignor and the consignee mentioned **is correct**, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

3. Error in the address of the consignee **to the extent that the locality and other details** of the consignee **are correct**;

4. Error in one or two digits of the document number mentioned in the e-way bill;

5. *Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

(As discussed above, section 129 cannot be invoked for wrong classification cases. Hence, in the opinion of author, such cases shall not be even treated as discrepancy.)

6. Error in one or two digits/characters of the vehicle number.

In such cases, penalty to the tune of Rs. 1000/- should be imposed.

Let's analyse the circular –

a) Circulars starts with “proceeding u/s 129 may not be initiated”. Owing to use of word may, it was observed that officers, at their discretion, following the circular.

b) Further, circular proceeds with word “*inter alia*”. It depicts that the list given is illustrative in nature. However, officers are strictly following it and not considering **situation like one digit of GSTIN on invoice is incorrect (without correct GSTIN, name of parties cannot be auto-populated while generating e-way bill) as minor discrepancy.**

– Section 73/74 : Comparative analysis

Notice u/s 73 or 74 can be issued to show cause as to why taxable person should not pay the amount specified in the notice along with interest payable thereon u/s 50 and penalty leviable under the Act. In following 4 scenarios, such notice can be issued.

– Tax not paid

– Tax short paid

– Tax erroneously refunded

– Input Tax Credit (referred as ITC hereinafter) wrongly availed or utilised

Now let's further analyse these provisions with a comparative chart.

Particulars	Section 73	Section 74	Author's Remarks
When can be invoked?	Where tax not paid/ short paid/ erroneously refunded or ITC wrongly availed or utilised by reasons other than fraud, or wilful misstatement or suppression of facts to evade tax	Where tax not paid/ short paid/ erroneously refunded or ITC wrongly availed or utilised by reason of fraud, or wilful misstatement or suppression of facts to evade tax	To issue notice u/s 74, department must substantiate that there is fraud or intention to evade tax in case of wilful misstatement or in case of suppression of facts. Unlike ST/Excise law, in this list of reasons, the terms collusion and contravention to any provision of the act are not there in GST. This difference in provision can be a part of defence in pleading.
Time limit to issue notice	At least 3 months prior to time limit of issuing order	At least 6 months prior to time limit of issuing order	
Time limit to issue order	3 years from the due date for furnishing annual return for the financial year to which such tax not paid or short paid or ITC wrongly availed or utilised relates or 3 years from the date of erroneous refund	5 years from the due date for furnishing annual return for the financial year to which such tax not paid or short paid or ITC wrongly availed or utilised relates or 3 years from the date of erroneous refund	In earlier ST/ Excise regime, such time limit to issue an order was not prescribed. However, directive provision " to determine tax payable in time limit where it is possible to do so " was there in erstwhile regime.

Penalty	<ul style="list-style-type: none"> · Voluntary payment or payment within 30 days of issue of notice : tax (+) interest (+) No penalty · Other cases : tax (+) interest (+) penalty 10% of tax or Rs. 10,000/- whichever is higher 	<ul style="list-style-type: none"> · Voluntary payment : tax (+) interest (+) 15% penalty • within 30 days of issue of notice : tax (+) interest (+) 25% penalty • within 30 days of issue of order – tax (+) interest (+) 50% penalty 	Role of consultants is crucial here in order to minimise the impact of penalty on clients.
---------	--	---	--

Section 75 (12) / Section 79 :

Section 75(12) : General provisions relating to determination of tax

- **Notwithstanding anything contained in section 73 or section 74,**
- where any amount of **self-assessed tax** in accordance with a return furnished under section 39 remains unpaid, either wholly or partly,
- or any amount of interest payable on such tax remains unpaid,
- **the same shall be recovered under the provisions of section 79**

Section 79 : Recovery of tax

- Where any amount payable by a person under this Act or the rules is not paid,
- the proper officer shall proceed to recover the amount by one or more of the modes prescribed under the section

(Under this section, modes to recover taxes such as, deduction of amount payable to govt. from money owing to such person, detaining and selling of goods belonging to such person are prescribed.)

Analysis :

- Section 75(12) read with section 79 of CGST Act, permits initiation of recovery proceedings of taxes without issuing show cause notice u/s 73/ 74.
- As observed, all the interest recovery notices are issued with reference to section 50(1), 75(12) & 79.

- However, the scope of section 75(12) is confined to **unpaid self-assessed tax**.
- To recover tax or interest on account of quantification by department, show cause notice u/s 73 or section 74 must be issued, following the principles of natural justice
- Same view was upheld by Karnataka High Court in case of **LC Infra Projects Pvt. Ltd. v/s Union of India** and recently pronounced Jharkhand High Court in case of **Mahadeo Construction Co. v/s Union of India**.
- Hence, in the opinion of author, such notices can be challenged on the basis of above mentioned grounds.

Also Read-GST शास्त्र : Walk through assessment, show cause notice and penalties provisions (Part 1)

(Above article was written on 14th May, 2020 & jointly authored by CA. Yogesh Ingale, CA. Tushar Ajmera and CMA. Anuj Chordiya. Views expressed are strictly personal. For any queries & feedback, reach us at yogesh.ingale@talentax.in.)

Kindly Refer to Privacy Policy & Complete Terms of Use and Disclaimer.

- [« Previous Article](#)
- [Next Article »](#)

Author Bio



Name: [CA Yogesh Ingale](#)

Qualification: CA in Practice

Company: Yogesh R. Ingale & Associates / TalenTax Renaissance Pvt. Ltd.

Location: Pune, Maharashtra, IN

Member Since: 01 Nov 2017 | Total Posts: [19](#)

[View Full Profile](#)

Leave a Comment

Your email address will not be published. Required fields are marked *