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Current Position of Section 73 Under the Legal Eye.

Section 73 of the Central Goods and Services Tax (CGST) Act, 2017 as well as Uttar Pradesh Goods and Services Tax (UPGST) Act, 2017, plays a pivotal role in addressing tax disputes where the taxpayer registered under the GST regime is unable to pay the taxes which may be due to either one or all of the following i.e. non-payment, short payment, or erroneous refunds occur without there being any intent to commit fraud, wilful misstatement, or suppression of facts. This section envisages to strike a balance between ensuring tax compliance and protecting taxpayers from undue harassment at the hands of authorities.

Scope and Applicability:-

Section 73 gets invoked in following cases:

1. **Tax has not been paid:** A taxpayer has failed to discharge their GST liability either fully or partially.
2. **Short payment of tax:** The taxpayer has paid a portion of the tax due but has underpaid the remainder of the amount.
3. **Erroneous refunds:** Refunds have been wrongly claimed or disbursed.
4. **Wrongful Availment of Input Tax Credit (ITC):** ITC has been availed or utilized incorrectly.

It is important to note that Section 73 is distinct from Section 74, which deals with similar defaults but with an added element of fraud, willful misstatement, or suppression of facts.

Mechanism of Section 73

1. **Issuance of a Show Cause Notice (hereinafter referred to as “SCN”):** Before initiating assessment proceedings under Section 73, the proper officer must issue a SCN to the taxpayer. The SCN should clearly state the reasons for the demand and provide detailed information on the alleged discrepancy or default leading to invoking of Section 73.
2. **Time Limits for Issuing SCN:**
 - o For cases under Section 73, the SCN must be issued **at least three months before the expiry of three years** from the due date for filing

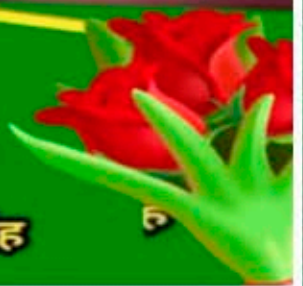
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आदेश: माननीय राष्ट्रीय अध्यक्ष, ठाकुर भानु प्रताप सिंह



of the annual return for the relevant financial year. This is based on the perusal of Section 73(2) r/w Section 73(10). Due date of filing of annual return is provided under Rule 80 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as “**CGST Rules, 2017**”) which stipulates that the annual return due date is 31st day of December following the end of financial year and thus limitation of three (3) years shall be calculated from 31st December onwards for the said financial year. For example for Financial Year 2019-20, 31st December 2020 shall be due date of filing of annual return and thus limitation to issue SCN would be 30th day of September 2023 and proceedings are to be adjudicated by 31st Day of December 2023.

However, due to PANDEMIC COVID-19 the above stipulated due dates for adjudicating proceedings were extended by invoking Section 168A of the CGST Act, 2017 for the financial year 2017-18, 2018-19 & 2019-20. The timeline in the beginning vide 47th GST Council Meeting for the financial year 2017-18 were recommended to be extended till 30th September 2023 which was later carried out vide Notification No. 13 of 2022 dated 05.07.2022 issued by the Central Government and Notification No. 596 dated 21.07.2022 issued by the State Government.

Later on, the timelines for adjudicating proceedings were again recommended to be extended vide 49th GST Council Meeting for the Financial Year 2017-18 till 31st Day of December 2023; for Financial Year 2018-19 till 31st Day of March 2024; and for Financial Year 2019-20 till 30th Day of June 2024 which was later carried out vide Notification No. 09 of 2023 dated 31.3.2023 issued by the Central Government and Notification No. 515/XI-2-23-9 (47)/17-T.C.215-U.P.Act-1-2017-Order-(273)-2023 dated 24.4.2023 issued by the State Government.

The vires of the extension made post 49th Meeting was under challenged before the Hon’ble Allahabad High Court and the same was upheld to be just and proper and in conformity with the statutory provisions of law in the case of **M/S Graziano Trasmissioni Vs Goods and Service Tax and 5 others, Writ Petition Tax No. 1256 of 2023**.

Recently, new time-limit extension notifications were issued by the Central Government for further extending time-limit for adjudicating proceedings under Section 73 for financial year 2018-19 upto 30th day of April 2024 and Financial Year 2019-20 upto 31st day of August 2024 vide Notification No. 56/2023-Central Tax dated 28th December 2023 and State Government issued Notification No. 13/XI-2-24-9(47)/17-T.C.250- UP Act-1-2017-Order-(311)-2024 dated February 7, 2024 for the said extension.

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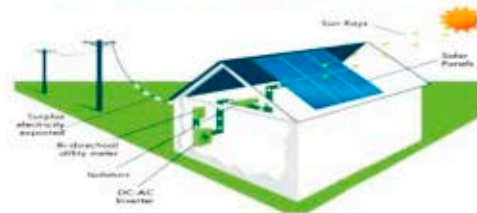
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However, these two time-limit extension notification were not at all recommended by the GST Council and thus are non-est(not in existence) in the eyes of law as mandatory provisions of Section 168A were not followed and therefore, any notice or order passed after taking the benefit of these two time-limit extension notification are patently illegal, arbitrary and bad in the eyes of law and is currently under challenging before the Hon'ble Allahabad High Court and interim orders of stay have been granted in favour of petitioners such as in **Writ Petition Tax No. 1916 of 2024; 1145 of 2024** with the leading petition being **Writ Petition Tax No. 1117 of 2024**.

The above interim orders have been passed in light of the judgement and order passed by Hon'ble Gauhati High Court in the case of **M/s Barkataki Print and Media Services Vs. Union of India Writ Petition (C) No. 3585 of 2024 dated 19.09.2024** wherein the Gauhati High Court has quashed the Notification No. 56/2023-Central Tax dated 28th December 2023 as they were issued without there being any Recommendation by the GST Council which is mandatory in terms of Section 168A of the CGST Act, 2017.

Thus, SCNs and orders issued under Section 73 of the CGST/UPGST Act, 2017 by taking benefit of Notification No. 56 of 2023 & Notification No. 13/XI-2-24-9(47)/17-T.C.250- UP Act-1-2017-Order-(311)-2024 dated February 7, 2024 are in conflict with law in the State of UP and across India.

Recently the GST council vide 53rd Meeting held on 22nd June 2024 has tried to fill up the gap by wavering the interest and penalties for demand notices issued under Section 73 of the CGST Act (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the financial years 2017-18, 2018-19 and 2019-20, if the full tax demanded is paid upto 31.03.2025. This act of GST Council of wavering interest and penalty is nothing but a white-wash in order to illegally demand the tax amount for the Financial Years 2018-19 and 2019-20 after expiry of the time-limit provided under Section 73(2) of the CGST Act, 2017 which they cannot otherwise demand.

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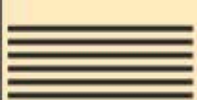


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