

Guidelines for Initiation of Recovery Proceedings Before Three Months from the Date of Service of Demand Order

Vide Instruction No. 01/2024-GST dated 30 May 2024, CBIC has issued an instruction regarding the timelines for commencing the recovery proceedings.

Section 78 of the Central Goods and Services Tax Act, 2017 (CGST Act) mandates a 3-month waiting period for initiating recovery proceedings for unpaid tax dues pursuant to the receipt of the order by the taxpayer. However, proviso to Section 78 of the CGST Act stipulates that in exceptional circumstances, the tax authorities are permitted to shorten this period, provided that they record reasons for the same in writing. The recovery proceedings can be initiated by the proper officer under Section 79 of the CGST Act.

To ensure consistent application of this provision, the Central Board of Indirect Taxes and Customs (CBIC) has issued the following clarifications:

▪ Proper Officer:

- The proper officer for initiating recovery proceedings under Section 79 of the CGST Act is the jurisdictional Deputy or Assistant Commissioner of Central Tax (DC/AC).
- Further, the proper officer under proviso to Section 78 of the CGST Act (for commencing recovery proceedings in a period of less than 3 months) is the jurisdictional Principal Commissioner / Commissioner of Central Tax (PC/C).

(See Circular No.3/3/2017-GST dated 5 July 2017)

▪ Procedure for initiating recovery under exceptional circumstances:

- While recovery proceedings under Section 79(1) of the CGST Act would be undertaken by the DC/AC, in exceptional circumstances where it is felt that recovery proceedings in respect of an amount payable by a taxable person in pursuance of an order needs to be initiated in the interest of revenue before completion of 3 months from the date of service of the order, the matter must be placed by such officer before the PC/C, along with the reasons/ justification for such an action.
- Subsequently, the PC/C shall examine the reasons/ justification given by the DC/AC at the earliest, and if he is satisfied that it is expedient in the interest of revenue to mandate the taxable person to pay the dues (as per the order) before completion of 3 months from the date of service of the order, he must record in writing, the reasons as to why the taxable person is required to make payment of such amount within such period (as may be specified) being less than a period of 3 months.
- After recording such reasons, the PC/C may issue directions to the concerned taxable person to pay the said amount within the specified period, sending a copy of such directions to DC/AC.

▪ Recording of reasons:

- PC/C should provide the specific reason(s) for asking the taxable person for early payment of dues, clearly outlining the circumstances prompting such early action.
- Such reasons could include high risk to revenue involved in waiting till the completion of the 3-month period due to apprehension that the concerned taxable person may close the business operations in the near future, or due to the possibility of default by the taxable person due to his declining financial conditions or impending insolvency, or likely initiation of proceedings under Insolvency and Bankruptcy Code, etc. Such reasons should also be based on credible evidence, which may be kept on record to the extent possible.

- While issuing directions, the proper officer must duly consider the financial health, status of business operations, infrastructure, and credibility of the taxable person, and strike a balance between the interest of the revenue and ease of doing business. Such directions should not be issued in a mechanical manner and must be issued only in cases where the interest of revenue is required to be safeguarded due to specific apprehension/circumstances in the said case.
- Wherever any directions are issued under proviso to Section 78 of the CGST Act, and where the taxable person fails to make payment within the specified period, the DC/AC shall proceed to recover the said amount as per Section 79(1) of the CGST Act.

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This is a business-friendly instruction, likely to have been issued due to the commencement of recovery proceedings in some cases even before the expiry of the 3 months period from the date of service of the order, causing the taxpayers to approach the jurisdictional High Court for relief. It is crucial that the instructions are followed by the tax authorities, both in letter and spirit, to facilitate a more conducive business environment.

[Source: Instruction No. 01/2024-GST dated 30 May 2024]

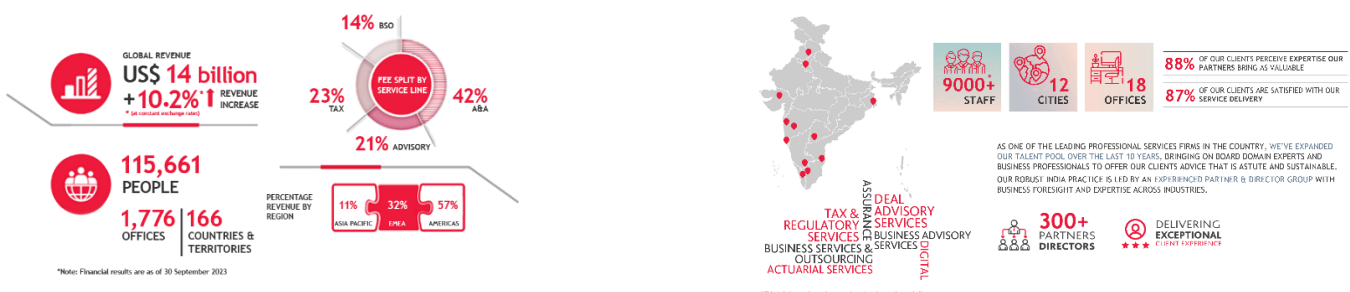


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