

TAX INFO

Dated 01/01/2023 [Sunday]

Latest update on GST Law: Summary of **Circular No. 185/17/2022-GST dated 27th December, 2022.**

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Section 75(3) of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court has to be issued within two years from the date of communication of the said direction. Accordingly, in cases where the show cause notice has been issued by the proper officer to a noticee under section 74(1) of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized but the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under section 74(1) of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under section 73(1) of CGST Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under of section 75(3) of the said Act, **i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court.**

In cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of section 73(1) of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund.

Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under section 73(1) of CGST Act in terms of section 75(2) of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be redetermined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund and the entire amount of the said demand in the show cause notice would be covered under redetermined amount.

In case, where the **show cause notice under section 74(1)** was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit **beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year** to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under section 74(1) of CGST Act thereby deeming the notice to have been issued under section 73(1), the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under section 74(1) of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.

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