



Important:

Instruction issued by CBIC on 07th January 2022 with respect to Guidelines for recovery proceedings under the provisions of section 79 of the CGST Act,2017 in cases covered under explanation to sub-section (12) of section 75 of the CGST Act,2017-Reg. (Recovery proceedings)

M & C Summary:

Section 75(12) was amended w.e.f 1st January 2022, wherein a stringent and dangerous amendment was made, to initiate recovery proceedings without issue of any show cause notice when they find any difference between the tax payable as per GSTR 1 and GSTR 3B. Which meant if there was any error or any other genuine differences, officers are given power to attach the property or initiate other recovery proceedings to recover such tax payable. This brought in lots of fear among taxpayers, CBIC to give some roadmap to use this provision, has given instructions to their field officers that any recovery proceedings shall be initiated only after getting an explanation from the taxpayer and give an opportunity to explain the difference. Hope these instructions will be followed by the officers.

Abstract of the instructions:

1. Sub-section (12) of section 75 of the CGST Act, 2017 (hereinafter referred to as "the Act") provides that notwithstanding anything contained in section 73 or section 74 of the Act, where any amount of self-assessed tax in accordance with the 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. An explanation has been added to subsection (12) of section 75 vide section 114 of the Finance Act, 2021 with effect from 01.01.2022 to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37. but not included in the return furnished under section 39.
2. Doubts are being raised by the trade and the field formations regarding modalities for initiation of the recovery proceedings under section 79 of the Act in the cases covered under the explanation to sub-section (12) of section 75 of the Act. In view of the above, the following guidelines are hereby issued with respect to the recovery proceedings under section 79 of the Act in such cases.
3. Sub-section (12) of section 75 of the Act is reproduced hereunder for reference:

"(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self- assessed tax in accordance with d 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

Explanation. - For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39. "

From the perusal of the above provision, it is clear that where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-I, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under the provisions of section 79.

3.2 There may, however, be some cases where there may be a genuine reason for difference between the details of outward supplies declared in GSTR-I and those declared in GSTR-3B. For example, the person may have made a typographical error or may have wrongly reported any detail in GSTR-I or GSTR-3B. Such errors or omissions can be rectified by the said person in a subsequent GSTR-I/ GSTR-3B as per the provisions of sub-section (3) of section 37 or the provisions of sub-section (9) of section 39, as the case may be. There may also be cases, where a supply could not be declared by the registered person in GSTR-I of an earlier tax period, though the tax on the same was paid by correctly reporting the said supply in GSTR-3B. The details of such supply may now be reported by the registered person in the GSTR-I of the current tax period. In such cases, there could be a mis-match between GSTR-I and GSTR-3B (liability reported in GSTR-I > tax paid in GSTR-3B) in the current tax period. Therefore, in all such cases, an opportunity needs to be provided to the concerned registered person to explain the differences between GSTR-I and GSTR-3B, if any, and for short payment or non-payment of the amount of self-assessed tax liability, and interest thereon, before any action under section 79 of the Act is taken for recovery of the said amount.

3.3 Accordingly, where ever any such amount of tax, self-assessed by the registered person in his outward supply statement GSTR-I is found to be short paid or not paid by the said person through his GSTR-3B return in terms of the provisions of sub-section (12) of section 75 of the Act, the proper officer may send a communication (with DIN, in terms of guidelines issued vide circular No. 12214112019-GST dated 5th November 2019) to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication. If, the concerned person is able to justify the differences between GSTR-I and GSTR-3B, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays the amount such short paid or not paid, then there may not be any requirement to initiate proceedings for recovery under section 79.

3.4 However, if the said registered person either fails to reply to the proper officer or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer, then the proceedings for recovery of the said amount as per provisions of section 79 may be initiated by the proper officer. Further, where the said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the proper officer, then the proper officer may proceed for recovery of the said amount as per provisions of section 79.