

# **FAQs > Filing Form GST DRC-06 against Proceedings initiated by Tax Officer u/s 73 and 74 Related to Determination of Tax**

## **1. What is Section 73 & 74?**

**Section 73:** Covers determination of tax not paid or short paid or erroneously refunded or ITC availed wrongly or utilized for any reason other than fraud, willful misstatement or suppression of facts.

**Section 74:** Covers determination of tax not paid or short paid or erroneously refunded or ITC availed wrongly or utilized by reason of fraud, willful misstatement or suppression of facts.

## **2. What are the reasons for initiating Assessment/Adjudication proceedings u/s 73 and 74?**

Some of the reasons for initiating Assessment/Adjudication proceedings u/s 73 and 74 are given below:

- Where the taxpayer has violated the conditions prescribed for availing composition scheme
- Where the ISD has distributed excess credit or distributed credit in contravention of the provisions of the Act
- Where the tax deductor fails to comply with the TDS provisions mentioned in section 51
- Where the taxpayer fails to comply with the notice issued u/s 61 or explanation given is not found satisfactory after the scrutiny of return
- Where the summary assessment framed u/s 64 has been withdrawn by Additional/Joint Commissioner either Suo moto or on application
- Where a case is recommended based on the Audit conducted u/s 65
- Where a case is recommended by Special Audit conducted u/s 66
- Where a case is recommended based on the survey conducted u/s 67
- Where there are other cases of tax not paid/short paid/erroneously refunded/ITC wrongly availed or utilized

## **3. What is the general procedure of conducting Assessment/Adjudication proceedings u/s 73 and 74?**

General procedure of conducting Assessment/Adjudication proceedings u/s 73 and 74 is:

- Notice shall be issued to the taxpayer for furnishing reply to show cause notice. In case the Tax Official has called for a Personal Hearing in the notice; date, time and venue of personal hearing will also be provided there
- If reply to notice furnished by taxable person within time specified or extended period is satisfactory, then "Drop Proceeding Order" will be issued.
- If reply to notice furnished by taxable person within time specified or extended period is not satisfactory, then officer can issue "Assessment order u/s 73 or 74" within specified period.

## **4. During Assessment/Adjudication proceedings u/s 73 and 74 against a taxpayer, at what different stages will a taxpayer receive an intimation via SMS or email?**

During Assessment/Adjudication proceedings, a taxpayer will receive an intimation via SMS or email on registered mobile no. and email ID.

Intimation via SMS or email will be sent at the following stages:

- Issue of Acknowledgement in Form GST DRC-04, if Voluntary Payment was made before the issue of SCN
- Issue of 'intimation of conclusion of proceeding' in Form GST DRC-05, if payment was made within 30 days of issue of SCN
- Issue of SCN and summary of show cause notice in Form GST DRC-01
- Issue of Statement and a summary of the statement in Form GST DRC-02.
- Submission of Reply in Form GST DRC-06
- Issue of each Adjournment notice
- Issue of each Reminder
- Issue of Assessment Order and summary of order in Form GST DRC-07 or Drop Proceeding Order

## **5. In case I make voluntary payment before the issue of Show Cause Notice (SCN), what is the procedure of conducting Assessment/Adjudication proceedings u/s 73 and 74?**

In case, taxpayer makes voluntary payment before issue of Show Cause Notice (SCN), the procedure of conducting Assessment/Adjudication proceedings u/s 73 and 74 will be as under:

- Tax officer will check and assess the payment made.
- If the tax officer is satisfied that the payment of amount mentioned in the case is made, then status of ARN/Case id will be changed to "Acknowledged" and intimation of acknowledgment of acceptance of payment made voluntarily will be sent to person via email and SMS and Acknowledgement will be issued in Form GST DRC-04.
- In case, voluntary payment made before SCN is found to be deficient or person has not made voluntary payment, tax officer has option to issue SCN for the amount which falls short of the amount actually payable. Tax officer has to decide the section in which proceedings are to be initiated i.e. section 73 or section 74.

## **6. What documents will I receive once the Tax Officer issues SCN u/s 73 or 74 against my case?**

Once the Tax Officer issues SCN u/s 73 or 74, you will receive two documents i.e. SCN under section 73 or 74, Summary of notice in Form GST DRC-01 generated by system and annexure uploaded by officer.

## **7. In what case does the Tax Officer issue Statement u/s 73 or 74?**

Statement u/s 73 or 74 can be issued for period not covered in SCN (on the same grounds as in the SCN under consideration).

## **8. Can a Statement u/s 74 be issued, where provisions of Section 73 are applicable?**

Yes, Statement u/s 74 can be issued, where provisions of Section 73 are applicable.

## **9. What documents will I receive once the Tax Officer issues Statement u/s 73 or 74 against my case?**

Once the Tax Officer issues Statement u/s 73 or 74 against your case, you will receive two documents i.e. Statement, and summary of Statement in Form GST DRC-02 generated by system and annexure uploaded by officer, if any.

## 10. How many reminders can be issued against a case after the issue of SCN/Statement?

After the issue of SCN/Statement, maximum 3 Reminders can be issued against a case.

## 11. How can I seek adjournment after the issue of SCN and how will I come to know whether or not tax officer has granted adjournment or not?

After the issue of SCN/Statement, you can seek adjournment by filing application of extension offline. If the same is approved by tax officer, then tax officer will update the adjournment details on the GST Portal and the intimation of issue of adjournment will be sent to taxpayer via his/her registered email and SMS and also will be available on taxpayer's dashboard: **Services > User Services > View Additional Notices/Orders > View > Case Details > NOTICES**

If extension request is rejected by tax officer, then tax payer will have to furnish explanation or attend the personal hearing on the date specified in SCN.

## 12. When do I need to file Reply in Form GST DRC-06?

Once the Tax Officer has issued SCN against your case and you have not made payment within 30 days of SCN due to any reason, you must file your Reply in Form GST DRC-06.

## 13. In the SCN issued against my case, the tax officer has not called for a Personal Hearing. Can I request for a Personal Hearing?

Yes, you can request for a Personal Hearing while filing your Reply in Form GST DRC-06 by selecting "Yes" in the **Personal Hearing Required?** field.

## 14. What happens on the GST Portal after filing Reply in Form GST DRC-06?

Once you file your reply in Form GST DRC-06 successfully, following actions take place on the GST Portal:

- ARN/Case ID Status is updated to "Reply furnished, Pending for order by tax officer".
- The REPLIES tab of the Case Details screen gets updated with the record of the filed reply
- You will receive an acknowledgement intimation via your registered email and SMS, along with the generated RFN.
- Form GST DRC-06 generated by system and attachments (if any) uploaded by you will be made available on the Tax Officer's dashboard.

## 15. When can the tax officer drop Assessment/Adjudication proceedings u/s 73 or 74 against the taxpayer?

The tax officer can drop Assessment/Adjudication proceedings u/s 73 or 74 against a taxpayer, if amount of dues is paid by the taxpayer or the reply filed by the taxpayer has been found satisfactory.

The proceedings can be deemed to be concluded in following cases:

- **For section 73:** If taxpayer makes the payment of tax along with interest and penalty @10% (if applicable) within 30 days of issue of notice and the tax officer is satisfied with above voluntary payment, then in such case, it shall be

deemed that all the proceedings have been concluded.

- **For section 74:** If taxpayer makes the payment of tax and interest along with penalty@25% of tax within 30 days of issue of notice and the tax officer is satisfied with voluntary payment, then in such case, it shall be deemed that all the proceedings have been concluded.

**Note:** Please refer to relevant Section/ Rule for details.

## **16. What is the criteria of issuing Assessment Order u/s 73 or 74?**

In case, the tax officer is not satisfied with the response of the taxpayer or if the taxpayer does not attend the personal hearing and neither furnish Reply on date specified in SCN or extended date, then tax officer can issue order u/s 73 or 74.

## **17. What documents will I receive once the Assessment Order u/s 73 or 74 is issued against my case?**

You will receive two documents i.e. Order and summary of the order in Form GST DRC-07 generated by system.

## **18. During the proceedings related to Determination of Tax u/s 73 and 74, the ARN/Case ID undergoes several status changes. What all and when these status changes take place?**

During Determination of Tax u/s 73 and 74 proceedings, the ARN/Case ID may undergo following Status changes:

- **Pending for action by tax officer:** When status of ARN/Case ID is under work item of tax officer
- **Pending for reply by taxpayer:** When tax officer sends notice to the taxpayer
- **Reminder No.1 issued:** When tax officer sends the first Reminder to the taxpayer for replying to the notice issued earlier
- **Reminder No.2 issued:** When tax officer sends the second Reminder to the taxpayer for replying to the notice issued earlier
- **Reminder No.3 issued:** When tax officer sends the third Reminder to the taxpayer for replying to the notice issued earlier
- **Reply furnished, pending for Order by tax officer:** When taxpayer replies to the notice issued by tax officer and the same is pending order/decision by tax officer
- **Reply not furnished, pending for order:** When taxpayer does not reply to the issued notice, within the period specified in the notice
- **Order for dropping proceedings issued:** When tax officer passes an order for dropping proceedings
- **Order for creation of demand issued:** When tax officer passes an order for creation of demand
- **Demand created:** When Demand id will be created as per ID master data