

Chapter XVIII

DEMANDS AND RECOVERY

142. Notice and order for demand of amounts payable under the Act.-

- (1) The proper officer shall serve, alongwith the
 - (a) notice under sub-section (1) of section 73 or sub-section (1) of section 74 or sub-section (2) of section 76, a summary thereof electronically in **FORM GST DRC-01**,
 - (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**,specifying therein the details of the amount payable.
- (2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.
- (3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.
- (4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 shall be in **FORM GST DRC-06**.
- (5) A summary of the order issued under sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.
- (6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

- (7) Any rectification of the order, in accordance with the provisions of section 161, shall be made by the proper officer in **FORM GST DRC-08**.

143. Recovery by deduction from any money owed.-

Where any amount payable by a person (hereafter referred to in this rule as “the defaulter”) to the Government under any of the provisions of the Act or the rules made thereunder is not paid, the proper officer may require, in **FORM GST DRC-09**, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

Explanation.- For the purposes of this rule, “specified officer” shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

144. Recovery by sale of goods under the control of proper officer.-

- (1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.
- (2) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC-10** clearly indicating the goods to be sold and the purpose of sale.
- (3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

- (4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction,

which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

- (5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in **FORM GST DRC-12**.
- (6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.
- (7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

145. Recovery from a third person.-

- (1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as “the third person”), a notice in **FORM GST DRC-13** directing him to deposit the amount specified in the notice.
- (2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged.

146. Recovery through execution of a decree, etc.-

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in **FORM GST DRC- 15** to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

147. Recovery by sale of movable or immovable property.-

- (1) The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate

their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in **FORM GST DRC- 16** prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

- (2) The proper officer shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or as the case may be, any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the proper officer to that effect.
- (3) Where the property subject to the attachment or distraint under sub-rule (1) is-
 - (a) an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;
 - (b) a movable property, the proper officer shall seize the said property in accordance with the provisions of Chapter XIV of the Act and the custody of the said property shall either be taken by the proper officer himself or an officer authorised by him.
- (4) The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in **FORM GST DRC- 17** clearly indicating the property to be sold and the purpose of sale.
- (5) Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

- (6) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.
- (7) The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (4):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.
- (8) Where any claim is preferred or any objection is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the proper officer shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.
- (9) The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distraint.
- (10) Where, upon investigation, the proper officer is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distraint.
- (11) Where the proper officer is satisfied that the property was, on the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the proper officer shall reject the claim and proceed with the process of sale through auction.

- (12) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of such notice and after the said payment is made, he shall issue a certificate in **FORM GST DRC-12** specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder:
- (13) Provided that where the highest bid is made by more than one person and one of them is a co-owner of the property, he shall be deemed to be the successful bidder.
- (14) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom the title in such property is transferred.
- (15) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer shall cancel the process of auction and release the goods.
- (16) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

148. Prohibition against bidding or purchase by officer.-

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

149. Prohibition against sale on holidays.-

No sale under the rules under the provision of this chapter shall take place on a Sunday or other public holidays declared by the State Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

150. Assistance by police.-

The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall

depute sufficient number of police officers for providing such assistance.

151. Attachment of debts and shares, etc.-

- (1) A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in **FORM GST DRC-16** prohibiting,-
 - (a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;
 - (b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
 - (c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.
- (2) A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.
- (3) A debtor, prohibited under clause (a) of sub-rule (1), may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

152. Attachment of property in custody of court or Public Officer.-

Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

153. Attachment of interest in partnership.-

- (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may,

by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

- (2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

154. Disposal of proceeds of sale of goods and movable or immovable property.-

The amounts so realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act or any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Central Goods and Services Tax Act and the rules made thereunder;
- (d) any balance, be paid to the defaulter.

155. Recovery through land revenue authority.-

Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer shall send a certificate to the Collector or Deputy Collector/ Deputy Commissioner of the district or any other officer authorised in this behalf in **FORM GST DRC- 18** to recover from the person concerned, the amount specified in the certificate as if it were an arrears of land revenue.

156. Recovery through court.-

Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub-section (1) of section 79 in **FORM GST DRC- 19** to recover from the person

concerned, the amount specified thereunder as if it were a fine imposed by him.

157. Recovery from surety.-

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

158. Payment of tax and other amounts in instalments.-

- (1) On an application filed electronically by a taxable person, in **FORM GST DRC- 20**, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- (2) Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in **FORM GST DRC- 21** allowing the taxable person further time to make payment and/or to pay the amount in such monthly instalments, not exceeding twenty-four, as he may deem fit.
- (3) The facility referred to in sub-rule (2) shall not be allowed where-
 - (a) the taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Services Tax Act or any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Central Goods and Services Tax Act, for which the recovery process is on;
 - (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act or any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Central Goods and Services Tax Act;
 - (c) the amount for which instalment facility is sought is less than twenty-five thousand rupees.

159. Provisional attachment of property.-

- (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in **FORM GST DRC-22**

to that effect mentioning therein, the details of property which is attached.

- (2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- (3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in **FORM GST DRC-23**, on proof of payment.
- (4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.
- (5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **FORM GST DRC- 23**.
- (6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in **FORM GST DRC- 23**.

160. Recovery from company in liquidation.-

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in **FORM GST DRC -24**.

161. Continuation of certain recovery proceedings.-

The order for the reduction or enhancement of any demand under section 84 shall be issued in **FORM GST DRC- 25**.