

GOVERNMENT OF ASSAM
OFFICE OF THE PRINCIPAL COMMISSIONER OF STATE TAX
CUM COMMISSIONER OF TAXES, ASSAM
KAR BHAWAN :: DISPUR, GUWAHATI-6

CIRCULAR NO. 133/2021-GST

Dated Dispur the 11th January, 2023

Subject: Clarification with regard to applicability of provisions of section 75(2) of Assam Goods and Services Tax Act, 2017 and its effect on limitation -reg.

No. CT/GST-15/2017/786.— Attention is invited to sub-section (2) of section 75 of Assam Goods and Services Tax Act, 2017 (hereinafter referred to as “Assam GST Act”) which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.
3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Principal Commissioner of State Tax, in exercise of its powers conferred by section 168 of the Assam GST Act, hereby clarifies the issues as under:

1.	<p>In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of Assam GST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court</p>	<ul style="list-style-type: none"> • Sub-section (3) of section 75 of Assam GST 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 any direction is issued by the appellate authority or appellate tribunal or the court to re-
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<p>concludes that the said notice is not sustainable under sub-section (1) of section 74 of Assam GST 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 sub-section (1) of section 73 of Assam GST Act, in accordance with the provisions of sub-section (2) of section 75 of Assam GST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?</p>	<p>determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of Assam GST Act in accordance with the provisions of sub-section (2) of section 75 of the said 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 sub-section (3) of section 75 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, as the case may be.</p>
<p>2. How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?</p>	<ul style="list-style-type: none"> • In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of Assam GST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of Assam GST Act. • Sub-section (1) of section 73 of Assam GST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of Assam GST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of Assam

GST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per **sub-section (10) of section 73** of Assam GST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer **within three years** from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.

- It transpires from a combined reading of these provisions that 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 sub-section (1) of section 73 of Assam GST 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 sub-section (1) of section 73 of Assam GST Act in terms of sub-section (2) of section 75 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, in respect of which **show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of Assam GST Act**. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of Assam GST Act relating to such financial years can be re-determined,

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 re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.

- In case, where the show cause notice under sub-section (1) of section 74 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 sub-section (1) of section 74 of Assam GST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, 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 sub-section (1) of section 74 of Assam GST 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.
- In cases, where the show cause in terms of sub-section (1) of section 74 of Assam GST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.
- Where the show cause notice under sub-

		section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.
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4. This Circular is clarificatory in nature and not meant for any interpretation of provisions of the Act and rules.
5. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Principal Commissioner at an early date.

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(Rakesh Agarwala, IAS)

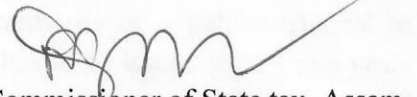
Principal Commissioner of State tax, Assam,
Dispur, Guwahati

Memo No. CT/GST-15/2017/786-A

Dated Dispur the 11th January, 2023

Copy to :

1. The Commissioner & Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Commissioner of Central GST, Guwahati / Dibrugarh for information.
3. The Special Commissioner of State tax (All) / Additional Commissioner of State tax (All)/ Joint Commissioner of State tax (All) / Deputy Commissioner of State tax (All) / Assistant Commissioner of State tax (All) / Superintendent of State tax (All) for information and necessary action.
4. The Information Technology Officer, Office of the Commissioner of State tax, Assam for uploading it on the website of the Commissionerate for information of all concerned.



Principal Commissioner of State tax, Assam,
Dispur, Guwahati