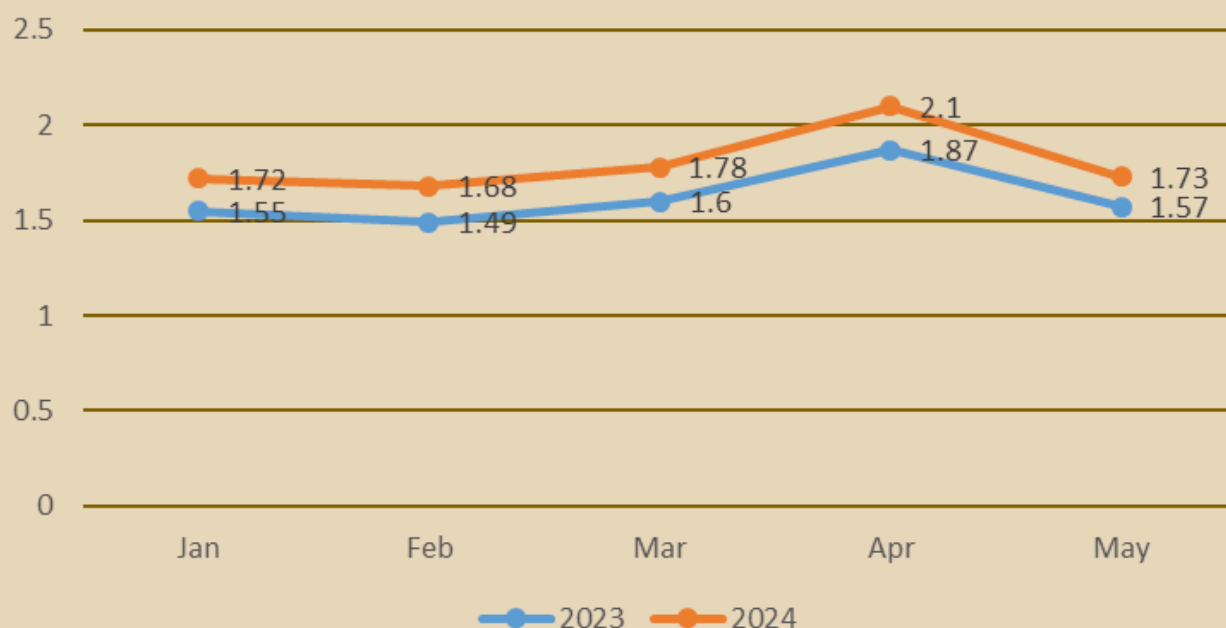


MONTHLY NEWSLETTER

ISSUED BY ADITYA MAHESHWARI & CO, CHARTERED ACCOUNTANTS

THE AMC CHRONICLE

Monthly GST Collection in Lakh Crores



AN INSIGHT - GST - SECTION 73 AND 74

BY CA. ADITYA KR MAHESHWARI

The immense importance of Sections 73 and 74 of the CGST Act 2017 can be understood with the saying:

"If there's a demand by an authority under GST, most roads lead to Section 73 or 74."

**Choice of
Section 73 or 74
is a
Tug of War
between
Unintentional Error and Intentional Fraud.**

Whether it's a departmental audit, a special department audit conducted by a nominated CA, or scrutiny of returns, notices concerning the determination of additional tax payable are typically issued under Sections 73 and/or 74. While the procedural provisions underlying Sections 73 and 74 are largely similar, differences exist in their penal provisions and timelines for issuing notices. Section 74's provisions are more stringent compared to Section 73.

The issuance of notice and determination of tax, interest, and penalty under either Section 73 or Section 74 is contingent upon the discretion of the proper officer, which hinges on whether the demand or anticipated demand arises from an unintentional error or intentional fraud. In essence, the choice between Sections 73 and 74 by the proper officer is guided by a subtle yet crucial distinction between error and fraud.

CRUCIAL DISTINCTION

	Section 73	Section 74
Cause of Issuance	Where it appears to Proper Officer that demand of tax may arise owing to: Unintentional Error	Where it appears to Proper Officer that demand of tax may arise owing to: Intentional Fraud
Timeline for Issuance of Notice	Within 2 years & 9 months from the Due Date of Annual Return of FY	Within 4 years & 6 months from the Due Date of Annual Return of FY
Timeline for Issuance of Order	Within 3 Years from the Due Date of Annual Return of FY	Within 5 years from the Due Date of Annual Return of FY
Penalty where Tax alongwith Interest & applicable penalty is paid before issuance of SCN (Notice)	Nil*	15% of Tax
Penalty where Tax alongwith Interest & applicable penalty is paid within 30 days of issue of SCN (Notice)	Nil*	25% of Tax
Penalty where Order is issued	10% of Tax or Rs. 10,000 whichever is higher	50% where tax, interest & penalty is paid within 30 days of serving of Order 100% where tax, interest & penalty is not paid within 30 days of serving of Order

*While subsections (6) and (8) of Section 73 outline provisions for nil penalty, subsection (11) supersedes these subsections by prescribing a minimum penalty of 10% of the tax amount or Rs. 10,000, whichever is higher, for cases where the tax has not been paid within 30 days from the due date. According to subsection (9), this penalty is applicable only when any tax, interest, and penalty are due as of the date of the order's issuance.

Strict interpretation of subsection (11) suggests that the penalty can be imposed for delayed filing of GSTR 3B beyond 30 days. However, CBIC circular no. 76/50/2018 clarifies that penalty under Section 73(11) shall not be levied for delayed filing of the GSTR 3B Return. The circular states that other penal provisions under section 125 may be imposed following due process of law.

Analysis:

- The decision to invoke either Section 73 or Section 74 is at the discretion of the Proper Officer, with no specific guidelines provided for this determination. Differentiating between an error deemed intentional or unintentional requires delicate balance. To safeguard revenue interests and err on the side of caution, the Proper Officer may be more inclined to invoke Section 74 over Section 73. Additionally, invoking Section 74 may extend the timeline for issuing notices. However, the taxpayer may disagree with the Proper Officer's opinion, potentially resulting in future litigation.
- "The invocation of penalties under Section 73(11) may result in severe consequences for taxpayers in many circumstances. Differences in the interpretation of Sections 73(9) and 73(11) in conjunction with Section 125 could lead to litigation in this regard.

Snapshot of timeline for issuance of Notice / order under section 73 or section 74

The issuance of Show Cause Notice and Order under section 73 or 74 is directly dependent on the due date of Annual Return for the respective financial year. The following tabular chart are the respective dates of issuance of show cause notice and order under section 73 or 74 of the CGST Act'2017.

Year	Due date of Annual Return (AR)	Section 73		Section 74	
		Issuance of SCN (33 Months from Due Date of AR)	Issuance of Order (36 Months from due date of AR)	Issuance of SCN (54 Months from due date of AR)	Issuance of Order (60 Monhs from due date of AR)
2017-18	05-02-20* 07-02-20*	30-09-23	31-12.23**	05-08-24 07-08-24	05-02-25 07-02-25
2018-19	31-12-20	31-01-24	30-04-24***	30-06-25	31-12-25
2019-20	31-03-21	31-05-24	31-08-24***	30-09-25	31-03-26
2020-21	28-02-22	30-11-24	28-02-25	31-08-26	28-02-27
2021-22	31-12-22	30-09-25	31-12-25	30-06-27	31-12-27
2022-23	31-12-23	30-09-26	31-12-26	30-06-28	31-12-28
2023-24	31-12-24	30-09-27	31-12-27	30-06-29	31-12-29

* AR filing date extended as per Notification No. 06/202 dated 03-02-2020 depending upon States

** Extended as per Notification No. 09/2023 dated 31-03-2023

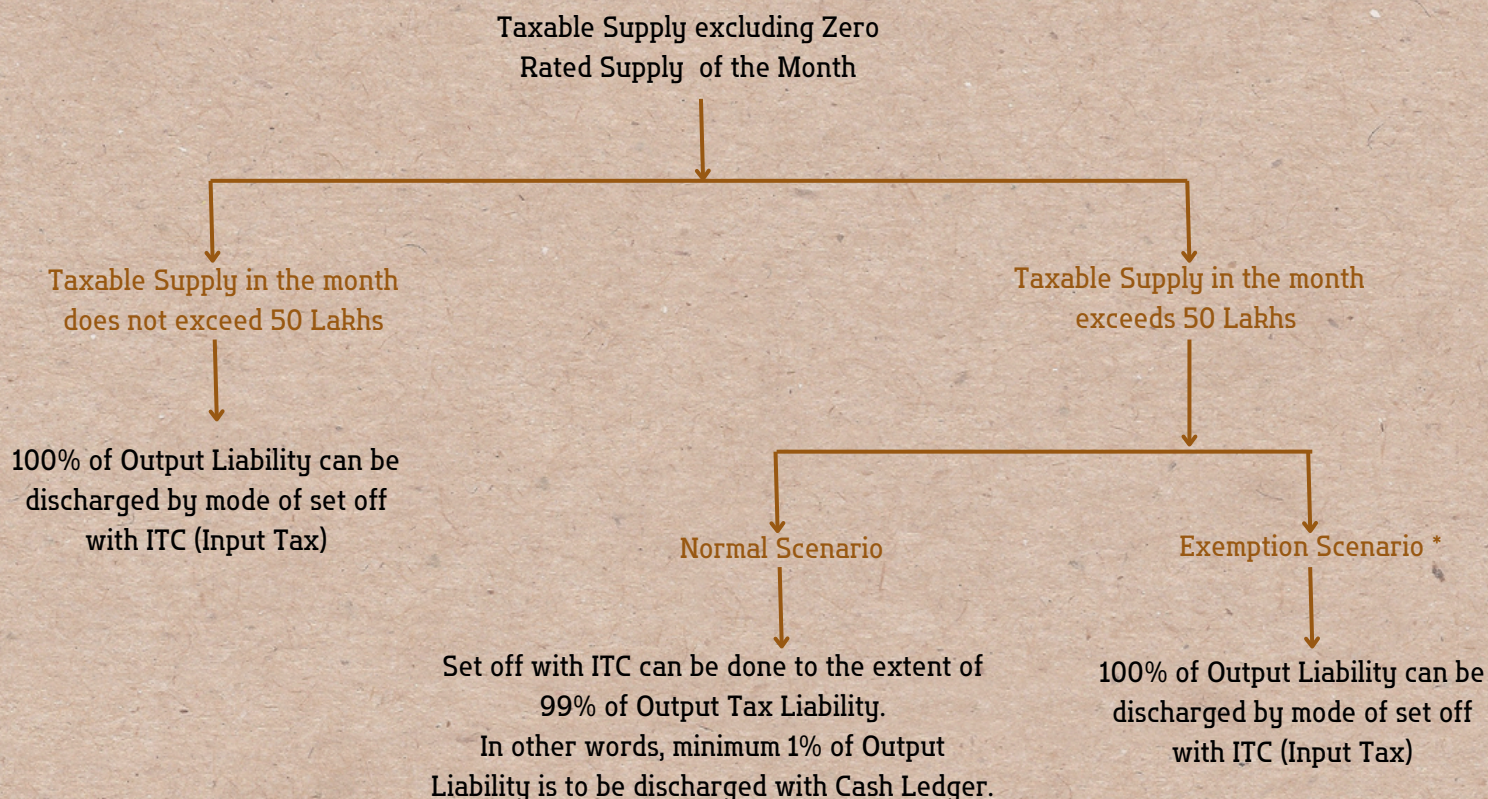
*** Extended as per Notification No. 56/2023 dated 28-12-2023

FREQUENTLY ASKED QUESTIONS

BY CA. AVIJEET GHOSHAL

Ques : Can an Output Liability be set off 100% with ITC Credit?

Ans : The Output Tax can be set off with ITC (Input Tax) by 100% in few cases and to the extent of 99% of Output Tax in few other cases as explained hereunder:



***Exemption Scenario:** As per Rule 86B, the restriction of 99% set off Output Tax Liability with Input Tax is exempted for following cases:

- Registered Person or its proprietor or karta or managing director or whole time directors or any of the two partners had paid more than 1 Lacs of Income Tax in each of last two Financial Years.
- Registered Person has claimed refund of more than one lacs in preceeding financial year under clause (1) or (ii) if first proviso of subsection 3 of section 54
- Registered Person is Government Department or PSU or Local Authority or a Statutory Body
- Registered Person has discharged his liability towards output tax through cash ledger for an amount which is in excess of 1% of Output Tax Liability cumulatively upto the said month in the current FY.

Disclaimer

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