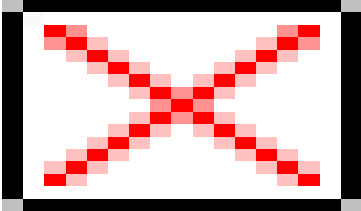


## Spot Recovery for difference between GSTR 1 & GSTR 3B - A Myth

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**THERE**

is a hue and cry amongst the trade that w.e.f. 1st January 2022 the GST officials can make a surprise visit to the registered premises and demand the tax liability without adjudication where there is mismatch between liability reflected in GSTR 1 & GSTR 3B.

These alarms bells are ringing due to insertion of explanation to sec 75(12) stating that tax declared in GSTR 1 will be considered as "**self-assessed tax**" for the purpose of sec 75(12) even though not included in GSTR 3B.

The sub-section (12) to S.75 and the Explanation [inserted by the Finance Act, 2021 and made effective from 1st January 2022] reads -

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

Due to insertion of the said explanation, a view is prevailing that recovery, in such cases of mis-match, can be made as per Sec 79.

An analysis of s.79 reveals that recovery can be made in one of the following modes:

1. The proper officer may deduct or require any other officer to deduct the amount from the money payable to the defaulter.
2. The proper officer may recover the amount by detaining and selling any goods belonging to the defaulter.
3. Directing any third person from whom money is due to the defaulter or holding the money on account of such defaulter to pay the amount to the government instead of that person.

In our view, Section 79 does not give any power to GST authorities to make visit to the premises for the recovery of said taxes. Further, there are no provisions of spot recovery under GST. The Section that deals with initiation of recovery i.e. Section 78 bars recovery of any tax till 3 months from the date of such order, post which the recovery proceeding can be initiated.

Further, the provisions which empower the officer to visit the premises are Sections 65, 66, 67 & 71. Some of the sections also require prior notice in writing in respect of such visit.

In the case of Mahadeo Construction Co. Vs Union of India - [2020-TIOL-850-HC-JHARKHAND-GST](#)

, it has been held that no garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest amount. A combined reading of the above provision and judicial precedents give a reasonable confidence that even in order to make recovery proceedings under Sec79, the GST authorities are not empowered to visit the premises without proper approvals and findings.

Further, if an officer makes a surprise visit for the recovery of tax (even without the empowering provision), following points need to be considered:

1. In case of any error identified in GSTR 1 the same can be rectified only in the GSTR 1 of subsequent months. There is no mechanism to revise GSTR 1 before filing GSTR 3B of the same month in order to make GSTR 1 & GSTR 3B comparable.
2. In absence of any supply and merely on the basis of a clerical error in filing GSTR 1, can recovery proceedings be initiated?
3. GST Act, itself gives time limit till September of next financial year to rectify any error or omission. One needs to see as to how the officer can override this provision and go for the recovery even before the time limit provided by the Act itself to rectify its error is over.
4. Also, as per Section 61 read with Rule 99, in case any discrepancy is observed in GST returns, the information can be sought in Form GST ASMT-10. This practice was already in place before introduction of the explanation to Sec 75(12).

The CBIC has issued a [clarification on twitter](#) that this amendment to section 75 is to "**impart payment discipline**" in the system and to facilitate the recipient of a supply to avail ITC in a timely manner. It is further stated that this amendment is clarificatory in nature and suitable guidelines will be issued to field formations for its implementation in a **reasonable** manner.

Though the intention of the law is good i.e. to introduce payment discipline, if the fear of the assessee is correct then there is a real chance of this amendment being misused for forceful recovery.

In our view, in case of any errors in GSTR 1 and in absence of any mechanism for revision of GSTR 1, the taxpayer should immediately inform the department of their error and intention to rectify the same in subsequent month GSTR 1 to avoid any recovery proceedings.

**Koo Koo**

CBIC should ensure that a Circular is issued in this regard and not merely rest its case via a tweet! After all, laws are not made on Twitter!

**(The views expressed are strictly personal.)**

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