

INDIRECT TAX

Redetermination of demand under CGST Section 75(2)

UPDATE NO. 4 OF 2023



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exceeding expectations
SINCE 1985



CBIC CIRCULAR NO. 185/18/2022-GST, DATED 27 DECEMBER 2022

CBIC has issued clarifications pertaining to redetermination of tax demand in terms of Section 75(2) of the CGST Act i.e., in cases where a notice issued under Section 74(1) is found to be unsustainable in any appellate proceedings on account of non-establishment of fraud, wilful-misstatement or suppression of facts against the assessee, and consequently the demand is required to be redetermined by deeming that the notice was issued under Section 73(1).

I. Limitation period for redetermination

CBIC has clarified that order of redetermination of demand shall be issued within a period of two years from the date of communication of the direction by the appellate authority or appellate tribunal or the Court, in terms of Section 75(3).

II. Demand to be dropped if notice was issued beyond the limitation period prescribed under Section 73

CBIC has clarified that demand can be redetermined only for so much of tax amount, ITC or erroneous refund, in respect of which, the notice under Section 74(1) was issued within the time limit prescribed under Section 73(2) i.e., 2 years and 9 months from due date of furnishing annual return for the FY to which such tax/ITC pertains, or 2 years and 9 months from the date of erroneous refund. Any part of the demand in respect of which such period had expired shall be dropped.

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