

AAGAZ

CA FINAL *Batch*

2025 & ONWARDS

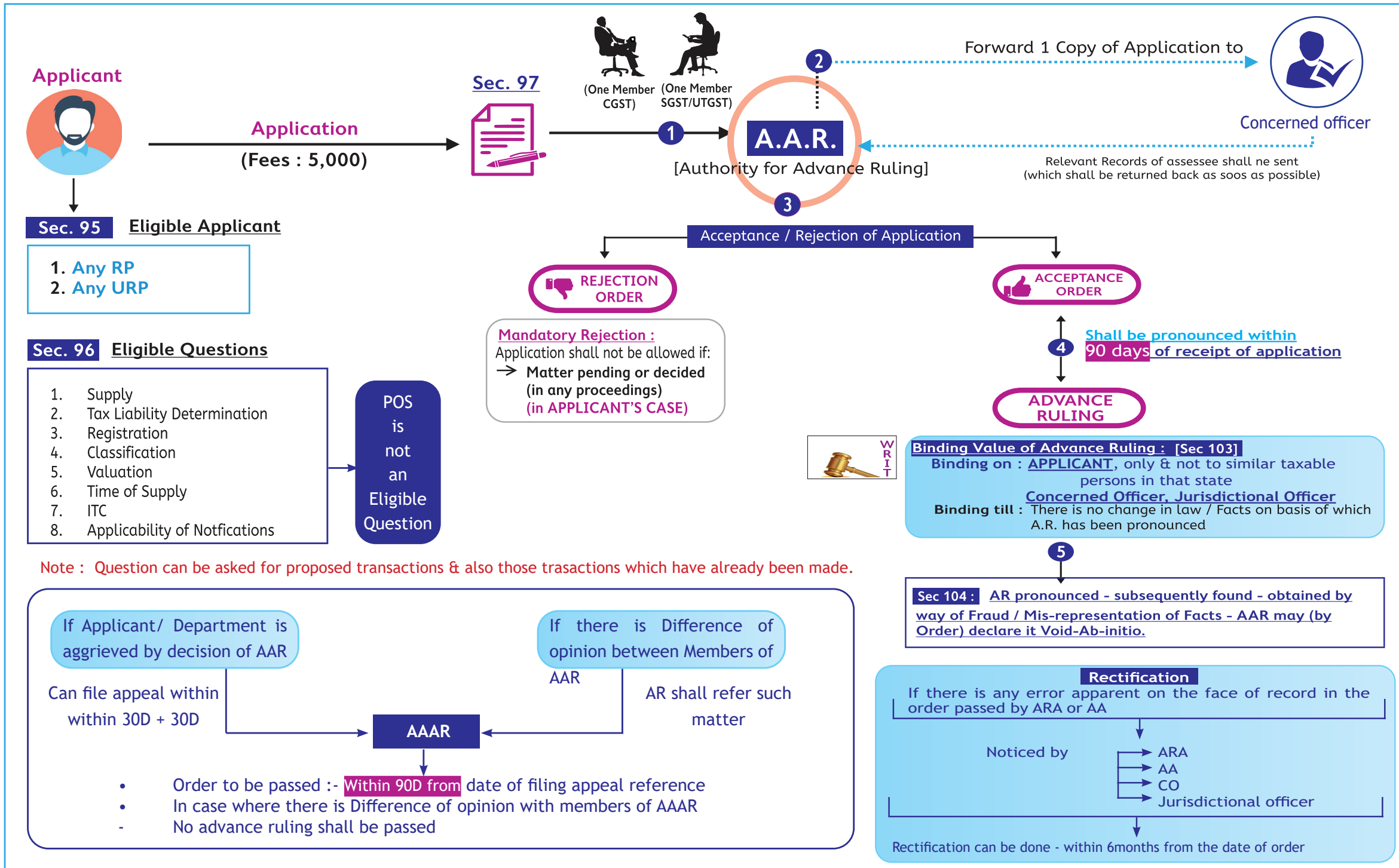
Indirect Tax Laws

Lecture - 01

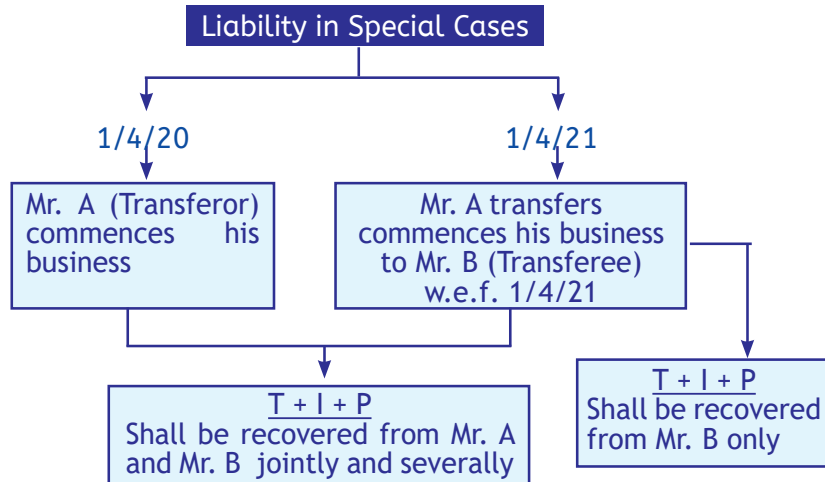
**Advance Ruling
Liability in Certain Cases
Audit and Assessment
Inspection Search & Seizure**

By -CA Karan Sheth

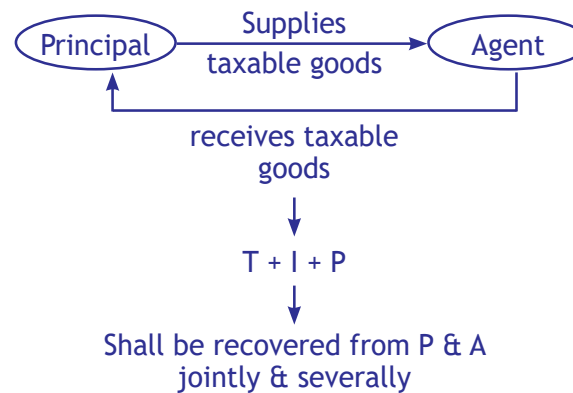




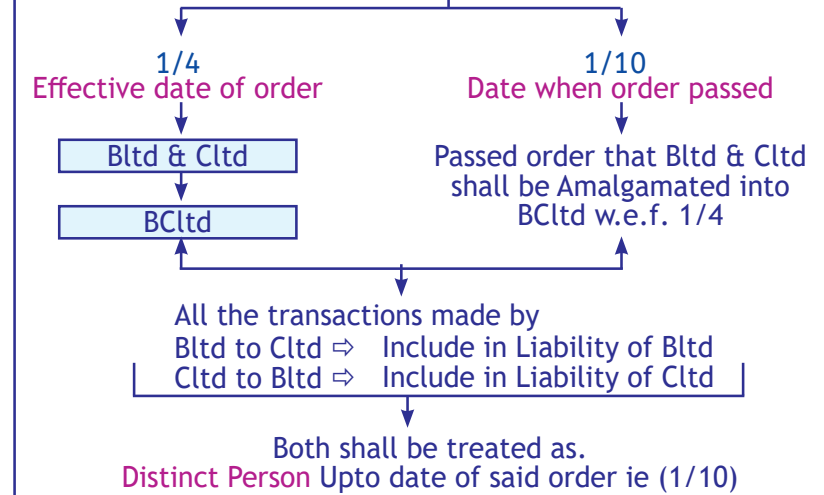
Sec 85 Liability in case of transfer of business



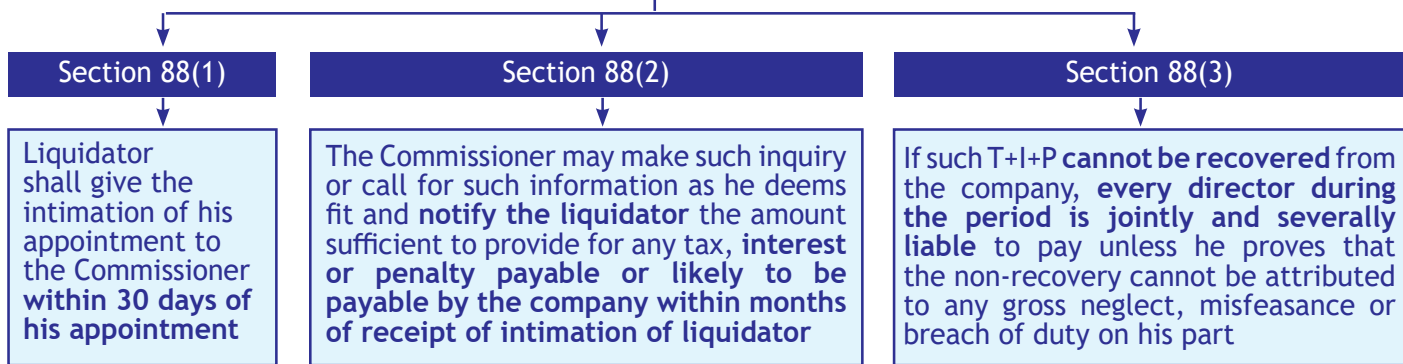
Sec 86 Liability of agent and principle



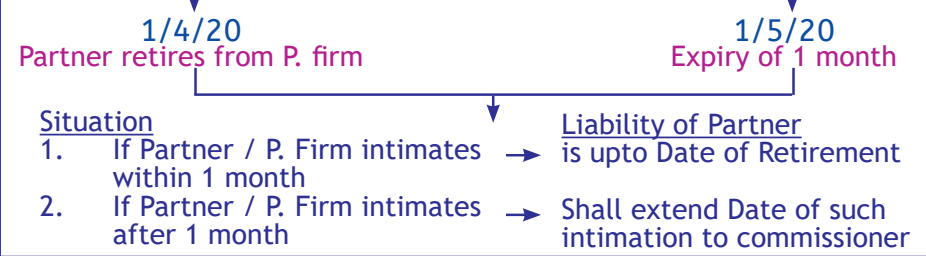
Section 87 : - Amalgamation



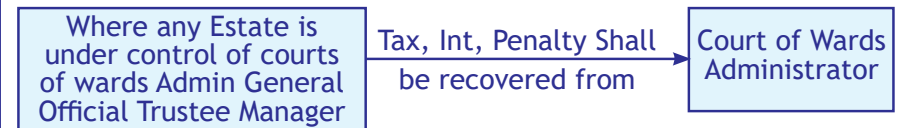
Section 88 : Liquidation of company



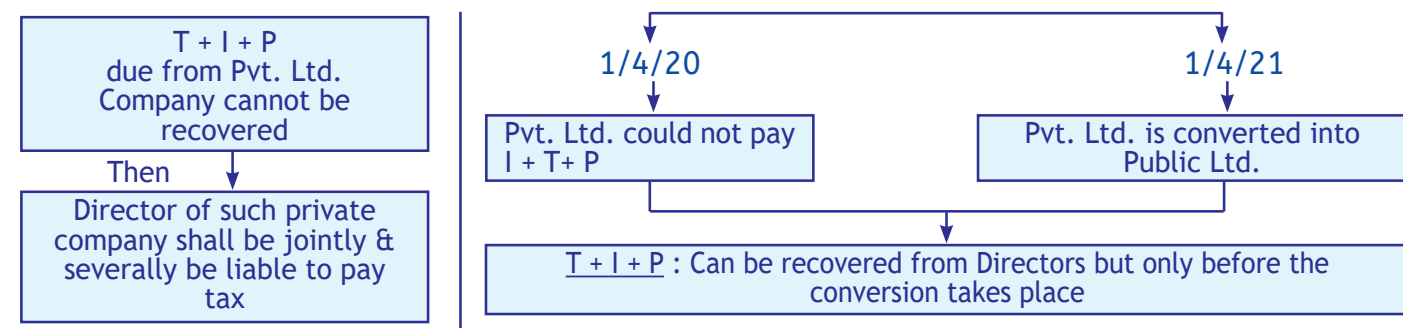
Section 90 → P. Firm



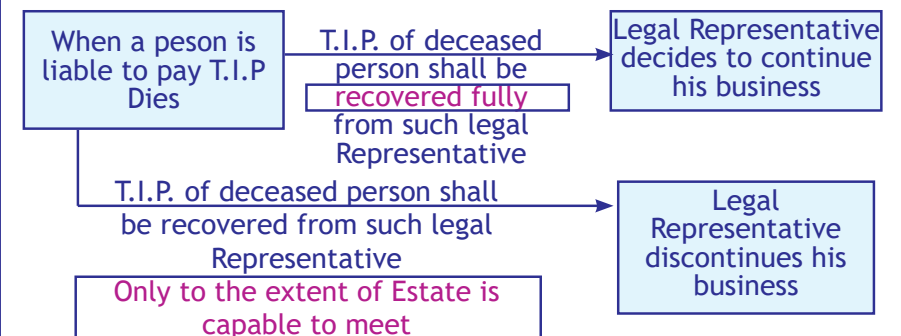
Section 92 → Official Trustee



Section 89(2) : Private Company



Section 93 → Deceased Person



Section 91 Minor & Guardian



In case of discontinuance of business of P firm
 Only those partners that are in the = Jointly & severally pay tax, Int, firm at the time of discontinuance Penalty due to firm.

Audit by Tax authorities

❖ **Who conducts the audit and when?**

- The Commissioner
- Any officer authorised by him, by way of a general or a specific order

❖ **Place of Audit?**

- Audit may be conducted at the place of business of registered person or in their office for a FY or part thereof or multiples thereof.

❖ **Notice period**

- At least 15 days prior notice should be given

Commencement of audit Means the later of the following:

- The date on which the records/accounts called for by the audit authorities are made available to them, or
- The actual institution of audit at the place of business of the taxpayer

❖ **Time limit for completion of audit?**

- 3 months from the date of conduct of audit
- **Extension by Commissioner** : not exceeding 6 months

❖ **How to conduct audit?**

- P.O authorised to conduct audit of the RP shall, verify the following:
- the documents on the basis of which the BOA/cs are maintained,
 - the returns and statements furnished
 - the correctness of the T/o, exemptions and deductions claimed,
 - the rate of tax of supply
 - ITC availed and utilized,
 - Refund claimed,

❖ **Finalisation of audit**

- On conclusion of audit, the proper officer shall within 30 days inform the registered person

Conclusion

Where Audit results in detection of Tax not Paid/Short Paid/ Erroneous Refund/ ITC wrongly availed / Utilized

P.O may initiate action u/s 73/74.

Special Audit

❖ **Who conducts the audit and when?**

- If at any stage of scrutiny, investigation or any other proceedings before him, any officer not below the rank of **Assistant Commissioner**, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that:
- the value has not been correctly declared; OR
 - the credit availed is not within the normal limits

AC shall issue a direction to RP after the Approval of Commissioner

To get his BOA/Cs Audited by CA/CMA Nominated by Commissioner

❖ **Expenses of Audit**

- Expenses will be borne by the Commissioner

❖ **Time limit for completion of audit?**

- 90 days
- **Extension by AC** : further 90 days

❖ **Time limit for completion of audit?**

- 90 days
- **Extension by AC** : further 90 days

Conclusion

Where Special Audit results in detection of Tax not Paid/Short Paid/ Erroneous Refund/ ITC wrongly availed / Utilized

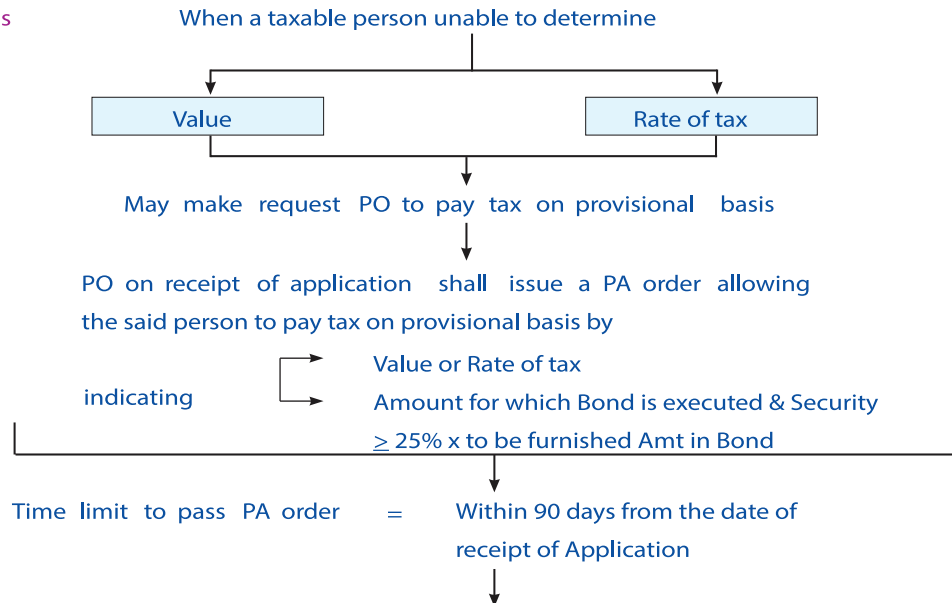
P.O may initiate action u/s 73/74.

Sec 59: Self Assessment

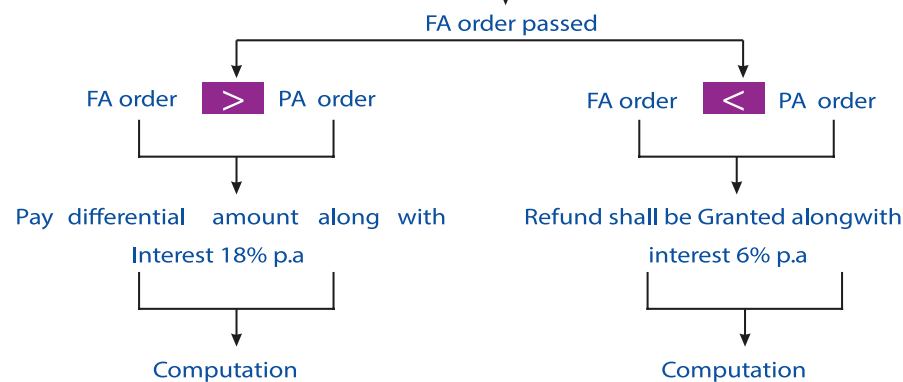
Every registered person shall self Assess the taxes payable under this act and furnish a return for each tax period as specified u/s 39.

Sec 60: Provisional Assessment

Analysis



Time limit to pass FA order	6m from the date of communication of PA order
Further Extension granted by Joint Comm/Addl ⁿ Comm	6m
Further Extension granted by Commissioner	4 years
Total	5 years

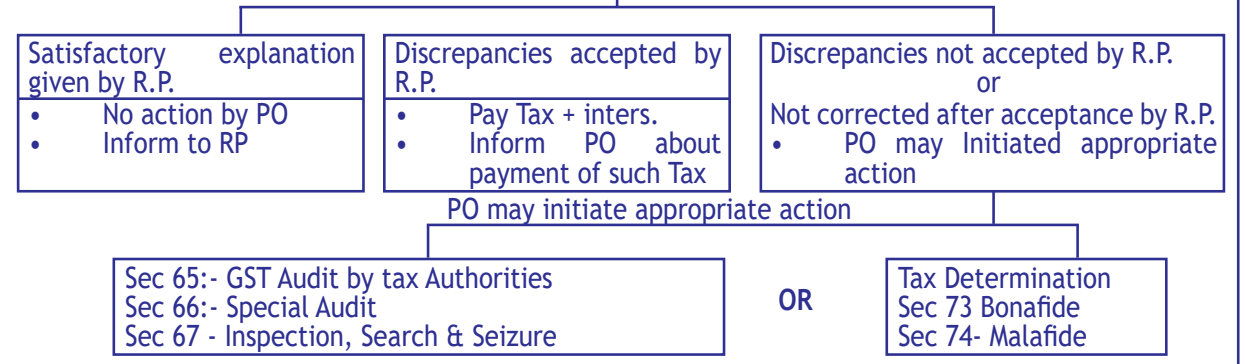


Date when the differential amount was due originally	xxx
Actual Date of payment	xxx
No of delayed days	xxx

Day after the Expiry of 60 days from date of receipt of refund Application	xxx
Date of grant refund	xxx
No of delayed days	xxx

Sec 61: Scrutiny of returns

- PO shall verify the correctness of return with respect to available information
- If discrepancies found, PO shall issue notice and person shall give a necessary Explanation within 30 days of service of notice



Sec 62 Assessment of non-filers of - returns S (Best Judgement Assessment)

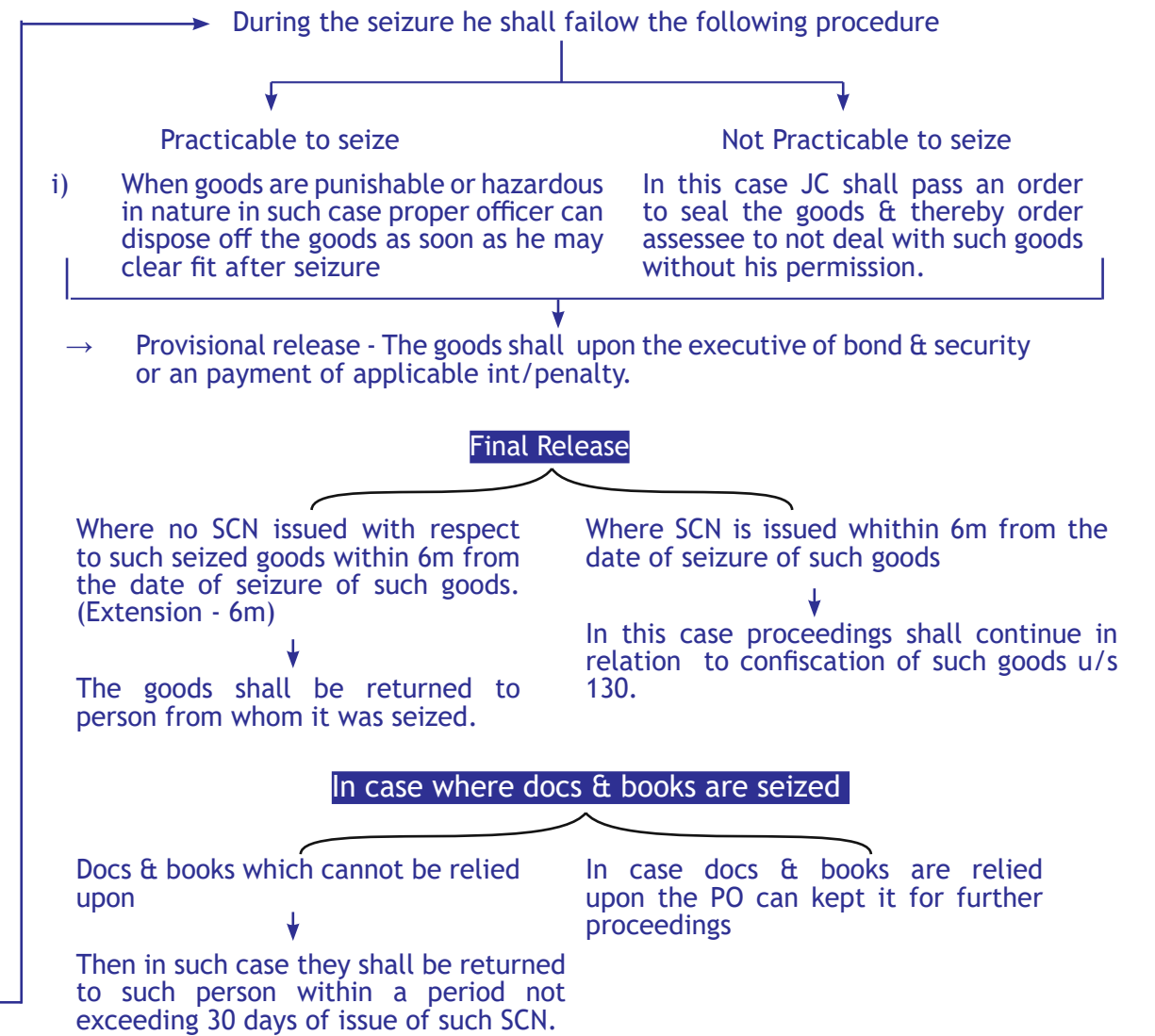
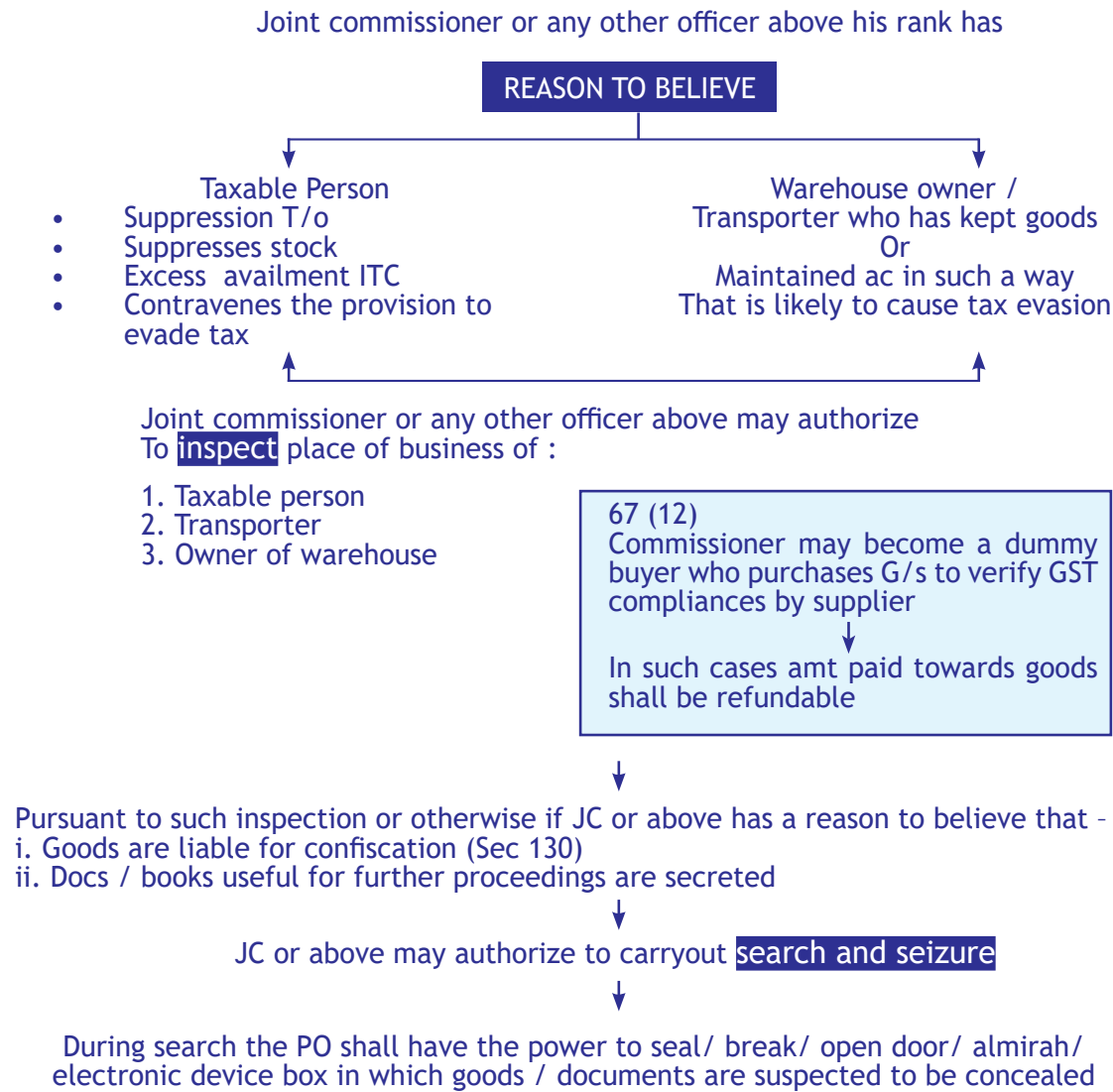
- Situation:** R.P. fails to furnish returns u/s 39, or U/s 45 (Final returns), & even after the service of notice u/s 46, taxable person fails to file return within 15 days then
- Withdrawal of BJA order:** When assessee furnishes a valid return within **60 days (+Extension 60D)** of service order (best judgement), it shall be deemed to have been withdrawn. But liability of interest (@18% pa) + late fee (100/- per max 5000/-) shall continue
- Time limit of order:** Within 5 years from D/D annual return for the FY to which tax not paid relates.

Sec 63 - Unregistered Person Best Judgement Assessment

- Situation:** If assessee fails to obtain registration or registration is cancelled u/s 29(2).
- Issue of notice:** PO issues a SCN & give **15 days time** to reply. And then issue an order & summary thereof shall be uploaded electronically.
- Time limit of order:** Within 5 years from D/D annual return for the FY to which tax not paid relates.

Sec 64: Summary Assessment

- Summary Assessment:** When PO has evidences showing tax liability of a person & delay adversely affectes revenue, he shall pass a summary assessment order. (prior apporval from AC/JC)
- Withdrawal of order:** The Summary Assessment Order may be withdrawn by Additional Commissioner/Joint Commissioner, -
 - on an application filed by taxable person for withdrawal of the summary assessment order within 30 days from the date of receipt of order; or
 - on his own motion, where he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.
- Deemed taxable person:** If taxable person is not ascertainable, & such liability O pertains to Supply of goods = Person incharge shall be liable to be assessed.



Sec 70 : Power to Summon

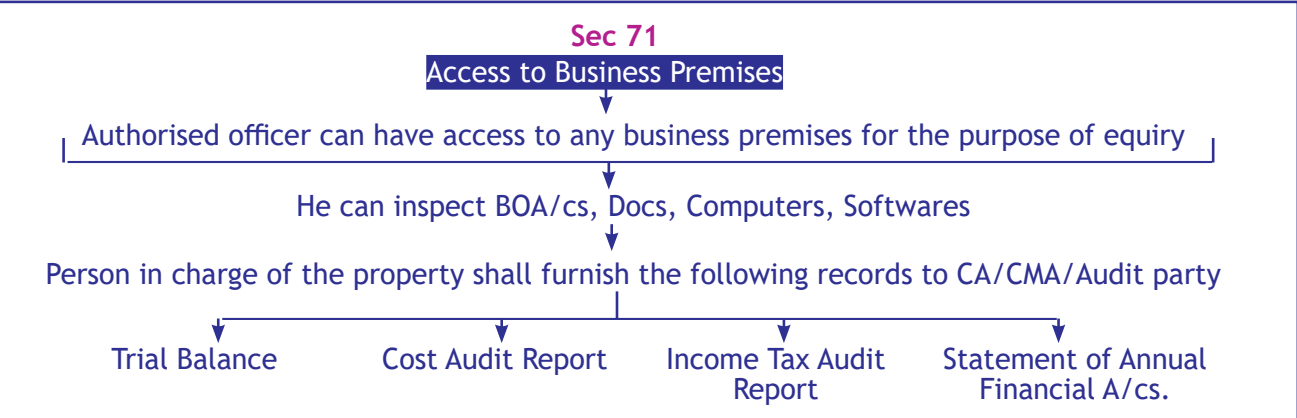
Situation : During the course of enquiry under this Act P.O may summon a person to appear before him & give evidence

Responsibilities of such sommoned person :

A person to whom summon is issued is leagally bound to attend either

- In person
- or
- Aurhorised Representative

He is bound to state the truth before the officer who has issued the summon and produce docs & other things as maybe required.



Officers To Assist Proper Officers [Section 72]

- i. Police;
- ii. Railways
- iii. Customs;
- iv. Officers of State/UT/ Central Government engaged in collection of GST;
- v. Officers of State/UT/ Central Government engaged in collection of land revenue;
- vi. All village officers;
- vii. Any other class of officers as may be notified by the Central/State Government.

Search Warrant and its contents.

The written authority to conduct a search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above.

Search Warrant should contain the following details:

- the violation under the Act,
- the premise to be searched,
- the name and designation of the person authorized for search,
- the name of the issuing officer with full designation along with his round seal,
- date and place of issue,
- serial number of the search warrant,
- period of validity

Safeguards provided for in respect of Search or Seizure

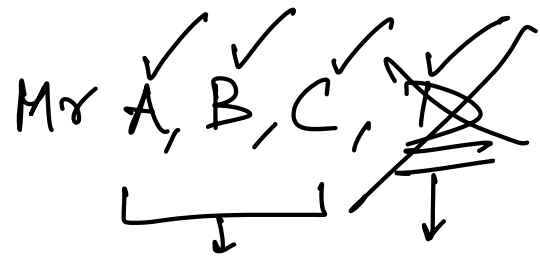
- Seized goods or documents should not be retained beyond the period necessary for their examination;
- Photocopies of the documents can be taken by the person from whose custody documents are seized;
- For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;
- Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure.

Safeguards for a person who is placed under arrest

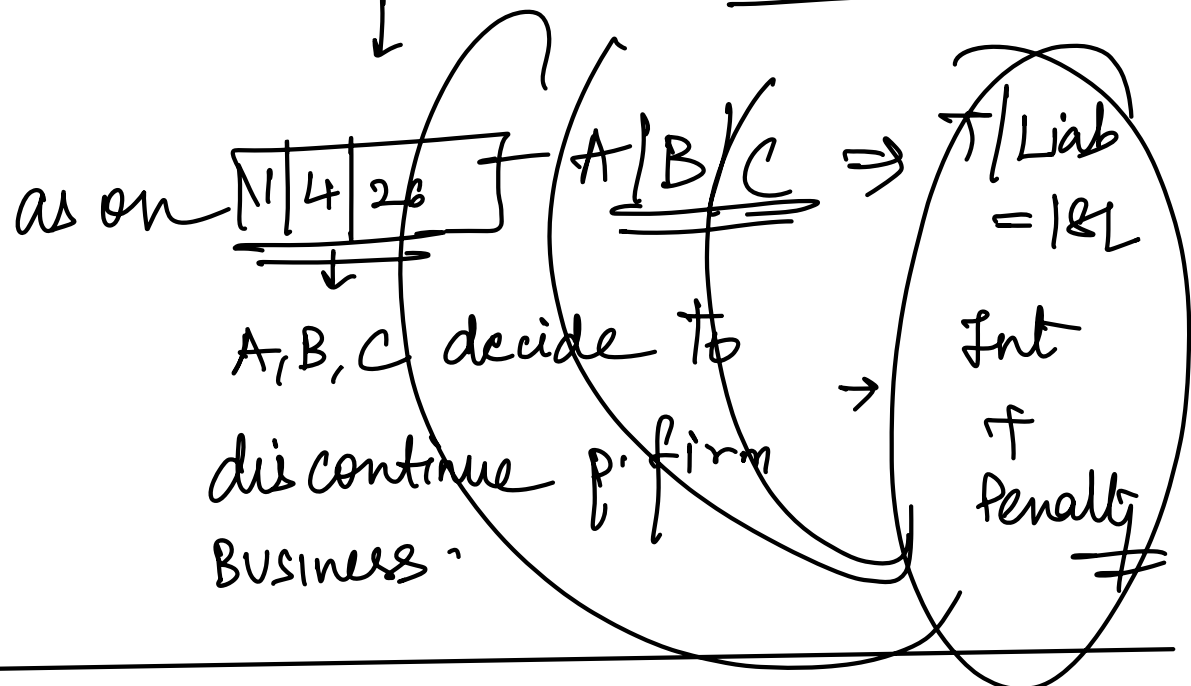
- If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;
- All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Section 132 of the Act also prescribes which types of offences are cognizable and non-bailable and which types of offences are non-cognizable and bailable.

Discontinuance of partners



Continue Retire - 1/4/25



1/4 = supply of goods = 10L

Prov. Assessment

2/4 = Applied for P.A

10/4 = PA order was communicated to pay tax @ 18%.

20/5 = 10L x 18% = 1.8L

1/10 = FA order was passed
GST @ 28% was assessed.

$$20/10 = \frac{\text{Paid Diff Amt (with Int)}}{\text{Int} = \frac{1L \times 18\% \times \text{Days}}{365}}$$

$(10L \times (28-18\%))$

Originally due = 20/5

Actual DOP = 20/10 ✓

Delayed Days =

May - 11

J - 30

- 31

- 31

- 30

- 20

FY 20-21 - Tax Not Paid

↓

A/R - D/D = 31/12/21
↓ 54%

D/D of pass 31/12/26 = ✓

BJA order

Non-filers of Return

SA - 3B/sec 45-FR-16

↓

Sec 46 - Notice (15D)

↓

R = X

↓

↓

BJA = ✓

↓

within GOD + 60D

VR = ✓

↓

~~BJA order = ✓~~

↓

BJA order = D/D

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Inspection / Search / Seizure

- **Precautions to be observed while issuing summons**

The following precautions should generally be observed when summoning a person: -

- ✓ (i) A summons should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- ✓ (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- ✓ (iii) The time of appearance given in the summons should be respected and no person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of

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strategy.

- ✓ (iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding the time and place of recording statement having regard to the facts in the case.



THANK YOU