



CHAPTER 22

ASSESSMENT

& AUDIT

**CHAPTER OVERVIEW**

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1. TYPES OF ASSESSMENT

1.1. SELF-ASSESSMENT [SECTION 59]

Every registered person under the Act shall himself assess the tax payable by him and after such assessment shall file return required u/s 39.

According to Section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred (i.e., after the due date for furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier).

If the department accept the self-assessment, it will become **final assessment**.

If department noticed any discrepancies, it will become **re-assessment**.

1.2. PROVISIONAL ASSESSMENT [SECTION 60]

(A) Meaning of Provisional Assessment

A method for determining tax liability in case correct tax liability cannot be determined at the time of supply. The major determinants of the tax liability are generally the applicable tax rate and the value.

There might be situations when value and tax rates might not be readily ascertainable and may be subject to the outcome of a process that requires deliberation and time.

(B) Steps involved in Provisional Assessment:

Step 1: Furnish application to Proper Officer

The registered person may furnish an application stating therein reasons for payment of tax on a **provisional basis** along with the documents in support of his request, electronically in **FORM GST ASMT-01**

Step 2: Reply to the application

The proper officer may, on receipt of the application, issue a notice in **FORM GST ASMT-02** requiring the registered person to furnish within 15 days additional information / documents in support of his request and the applicant shall file a reply in **FORM GST ASMT-03** to the notice, and may appear in person before the said officer if he so desires.

**Step 3: Issue order on provisional basis by Proper Officer**

The proper officer shall issue an order in **FORM GST ASMT-04** within a period not later than **90 days** from **date of receipt of request**, allowing payment of tax on a *provisional basis* indicating -

- Value / rate or both on the basis of which the assessment is to be allowed on a provisional basis, and
- Amount for which the bond is to be executed; and
- Security to be furnished not exceeding **25% of the amount covered under the bond**

Step 4: Furnish of security

1. The payment of tax on provisional basis may be allowed, if the taxable person executes a **bond** in **FORM GST ASMT-05** along with a **security** in the form of a **bank guarantee** for an amount as the proper officer may deem fit, binding the taxable person for payment of difference between the amount of tax as **finally assessed** and the amount of tax **provisionally assessed**.
2. A bond furnished to the proper officer under the CGST/SGST/IGST Act shall be deemed to be a bond furnished under the provisions of this Act and the rules made thereunder.

(C) Finalization of Provisional Assessment

The proper officer shall issue a notice in **FORM GST ASMT-06** calling for such information and records, as may be required and shall issue a final assessment order in **FORM GST ASMT-07** specifying the amount payable / amount refundable, if any, by the registered person.

Time limit to pass order of provisional assessment

The final assessment order has to be passed by the proper officer within **6 months** from date of the communication of the order of provisional assessment.

This period can be further extended by

- **6 months by Joint/Additional Commissioner**
- **4 years by Commissioner**

on sufficient cause being shown and for reasons to be recorded in writing.

Once the order in FORM GST ASMT-07 is issued, the supplier has to file an application in **FORM GST ASMT-08** for the release of the security furnished.

On receipt of this application the Asst. Commissioner/Dy. Commissioner of Central Tax will issue an order in **FORM GST ASMT-09** within **7 working days** from the date of the receipt of the application, releasing the security after the amount payable if any as specified in FORM GST ASMT-07 has been paid



(D) Difference between Tax liability as per Final assessment & Provisional assessment

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| <p>Tax liability as per the final assessment is <u>higher</u> than in provisional assessment</p> <p>(Tax becomes payable)</p> | <p>Interest @ 18% p.a. will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment</p> |
| <p>Tax liability as per the final assessment is <u>less</u> than in provisional assessment</p> <p>(Tax becomes refundable)</p> | <p>Interest @ 6% p.a. u/s 56 from the date immediately after the expiry of 60 days from the date of receipt of application u/s Section 54(1) till the date of refund of such tax is refundable to supplier.</p> |

Illustration 1:

M/s Ram Ltd. manufacture and cleared goods under provisional assessment, in the month of July, 2017, by paying tax of ₹ 50,000 on the 20th August, 2017 [i.e. due date of filing GSTR-3], a further tax of ₹ 90,000 is paid on the 15th November, 2017, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on the 18th November, 2017, assessing the tax payable on goods as ₹ 1,50,000, and consequently the assessee paid a tax of ₹ 10,000 on the 30th November, 2017. Find the total interest payable by the assessee? **[Answer: ₹ 4,364]**

Solution:

No interest shall be payable on ₹ 50,000.

Interest shall be payable on ₹ 90,000 from the 21st August 2017 to 15th November 2017.

Therefore No. of days delay = 87 days.

Interest shall be payable on ₹ 10,000 from the 21st August 2017 to 30th November 2017 as due date for payment of duty of ₹ 1,50,000 is the 20th August 2017. Therefore, No. of days delay = 102 days.

$$₹ 90,000 \times 18/100 \times 87/365 = ₹ 3,861$$

$$₹ 10,000 \times 18/100 \times 102/365 = ₹ 503$$

Total interest payable = ₹ 4,364

(E) Release of Security

- (a)** The applicant may file an application for release of security furnished **after issue of final assessment order.**
- (b)** The proper officer shall release the security after ensuring that applicant has paid the amount specified in **final assessment order** and issue an order within **7 working days** from the date of receipt of the application.



1.3. SCRUTINY OF RETURNS [SECTION 61]

(A) Verifying the correctness of return

Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize such returns with reference to the information available with him.

(B) Issue of notice

The Proper officer shall issue a notice in **FORM GST ASMT-10** to the person informing him of any discrepancy, if found, and seeking his explanation thereto within a period not exceeding **30 days** from the date of **service of the notice**, or such further period as may be permitted by him. Where possible, amount of tax, interest and any other amount payable in relation to such discrepancy shall be quantified.

(C) Reply to notice

The registered person to whom notice is issued may –

- i. **Accept the discrepancy** as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy to the proper officer in **FORM GST ASMT- 11** to the proper officer, or
- ii. **Submit his explanation** regarding non-acceptance of discrepancy within **30 days** of being informed by the proper officer or such further period as may be permitted by him.

(D) Action by Proper Officer

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| Explanation furnished by the registered person or the information submitted is found to be acceptable | The Proper Officer shall inform him in FORM GST ASMT-12 accordingly and no further action shall be taken in this regard |
| No satisfactory explanation is furnished or fails to take the corrective measure in his return for the month in which the discrepancy is accepted | The Proper Officer may take recourse to any of the following provisions: <ul style="list-style-type: none">• proceed to conduct audit u/s 65 of the Act• direct conduct of a special audit u/s 66 which is to be conducted by a CA/CMA• undertake procedures of inspection, search and seizure under section 67 of the Act; or• initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act. |



1.4. ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]

(A) Best Judgment Assessment

The proper officer may proceed to assess the tax liability of said person (i.e. Return Defaulter) to the best of his judgement taking into account all the relevant material which is available or which he has gathered when he has failed to furnish:

- return u/s 39 (monthly/quarterly) or u/s 45 (final return), and
- return within 15 days in response to notice u/s 46 issued by proper officer to the defaulting taxable person

Therefore, issuance of notice u/s 46 is a necessity for commencing proceedings under Section 62. Non-issuance of notice under Section 46 closes the door on invoking Section 62 although other provisions are available to recover the tax dues

(B) Time Limit for Assessment Order

The Assessment Order shall be issued by Proper Officer in **FORM GST ASMT 13** within **5 years** from date specified u/s 44 for furnishing of the **annual return** for the financial year to which the tax not paid relates.

Example: If a person defaults in filing of return for any tax period falling in F/Y 2017-18, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2017-18 i.e. 31.12.2018. Accordingly, Best judgment Assessment can be made by Proper Officer on or before 31.12.2023.

(C) Withdrawal of Assessment Order

Where the registered person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him) within **60 days** of the service of the assessment order, the said assessment order shall be deemed to have been **withdrawn** but the liability for payment of interest u/s 50(1) or for payment of late fee u/s 47 shall continue.

Provided that where the registered person fails to furnish a valid return within 60 days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹ 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest u/s 50(1) or to pay late fee u/s 47 shall continue."



1.5. ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]

(A) Assessment of unregistered persons

The proper officer may proceed to assess the tax liability of unregistered person to the best of his judgement in following cases:

- a) fails to **obtain registration** even though liable to do so; or
- b) registration has been **cancelled** u/s 29(2), for any of the following reason, namely—
 - 1) registered person has contravened such provisions of the Act or the rules made thereunder; or
 - 2) person paying tax under composition levy u/s 10 has not furnished returns for 3 **consecutive tax periods**; or
 - 3) registered person, other than persona paying tax under composition scheme, has not furnished returns for continuous period of **6 months**; or
 - 4) person who has taken voluntary registration u/s 25(3) has not commenced business within **6 months** from the date of registration; or
 - 5) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

(B) Issue of notice:

The Proper Officer shall issue notice to a taxable person in **Form GST ASMT 14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall be given **15 days'** time to furnish his reply, if any. However, no such assessment order shall be passed without giving the person an opportunity of being heard.

(C) Time Limit for Assessment Order

The assessment order shall be issued by proper officer in **Form GST ASMT 15** within **5 years** from **due date** for furnishing the **annual return** for the financial year to which non-payment of tax relates.

Assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date applicable for filing annual return for the year to which tax not paid relates.



1.6. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES [SECTION 64]

(A) When can summary assessments be made

Summary Assessments order can be passed in **Form GST ASMT 16** to **protect the interest of revenue** with the previous permission of Additional Commissioner/Joint Commissioner when:

- i. The Proper Officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- ii. The Proper Officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

Note: Deemed taxable person in case of supply of goods

Where the taxable person to whom the liability pertains is **not ascertainable** and such liability pertains to supply of goods, **the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.**

(B) Withdrawal of Assessment Order

The Summary Assessment Order may be **withdrawn** by Additional Commissioner/Joint Commissioner, –

- a) on an application filed by taxable person in **Form GST ASMT 17** for withdrawal of the summary assessment order within **30 days** from the date of receipt of order; or
- b) 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

Rejection of application shall be made by the proper officer by an order in **Form GST ASMT 18**.

Forms prescribed in connection with the Assessment

| Forms | Deals with |
|--------------------|--------------------------------------------------------------------------------------------------|
| GST ASMT 01 | Application for Provisional Assessment u/s 60 |
| GST ASMT 02 | Notice for Seeking Additional Information / Clarification / Documents for provisional assessment |
| GST ASMT 03 | Reply to the notice seeking additional information |
| GST ASMT 04 | Order of Provisional Assessment |
| GST ASMT 05 | Furnishing of Security |
| GST ASMT 06 | Notice for seeking additional information / clarification / documents for final assessment |
| GST ASMT 07 | Final Assessment Order |
| GST ASMT 08 | Application for Withdrawal of Security |
| GST ASMT 09 | Order for release of security or rejecting the application |
| GST ASMT 10 | Notice for intimating discrepancies in the return after scrutiny |
| GST ASMT 11 | Reply to the notice issued u/s 61 intimating discrepancies in the return |



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| GST ASMT 12 | Order of acceptance of reply against the notice issued u/s 61 [Scrutiny returns] |
| GST ASMT 13 | Assessment order u/s 62 [Assessment of non-filers of returns] |
| GST ASMT 14 | Show Cause Notice for assessment u/s 63 [Assessment of unregistered persons] |
| GST ASMT 15 | Assessment order u/s 63 [Assessment of unregistered persons] |
| GST ASMT 16 | Assessment order u/s 64 [Summary assessment] |
| GST ASMT 17 | Application for withdrawal of assessment order issued u/s 64 |
| GST ASMT 18 | Acceptance or Rejection of application filed u/s 64(2) |

2. TYPES OF AUDIT UNDER GST

2.1. AUDIT BY TAX AUTHORITIES [SECTION 65]

(A) Who can conduct this audit?

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

may undertake audit of any **registered person** at the place of business of the registered person or in their office for a financial year or multiples thereof.

The proper officer shall issue a notice in **Form GST ADT-01** not less than **15 working days** prior to the “**conduct of audit**”.

Commencement of audit means **later** of the following:

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

(B) Time limit of completion of audit

The audit is required to be completed within **3 months** from the date of “**commencement of audit**”. The period is extendable for a further period of a **maximum of 6 months** by the Commissioner

(C) How to conduct Audit

The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, **verify** following

- Documents on the basis of which the books of account are maintained and
- Returns and statements furnished under the Act and the rules made thereunder,
- Correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized,
- Refund claimed



ASSESSMENT & AUDIT

Queries raised by Proper Officer: During the course of audit, the authorised officer may require the registered person to provide following:

- facilitate the verification of accounts/records available or requisitioned by the authorities,
- such information as the authorities may require for the conduct of the audit, and
- render assistance for timely completion of the audit.

No finalisation of audit before considering reply furnished to the discrepancies noticed by officer

The proper officer may inform the registered person of the discrepancies noticed, if any, as observations of the audit and the said person may **file his reply** and the proper officer **shall finalise the findings of the audit after due consideration of the reply furnished**

(D) Finalisation of audit

- The proper officer shall **finalise the findings** of the audit after due consideration of the reply furnished by registered person to audit observation brought to his notice during the course of audit.
- On conclusion of audit, the proper officer shall within **30 days** inform the registered person whose records are audited, about the findings, his rights and obligations and the reasons for such findings in **Form ADT-02**.
- Where the audit results in detection of **tax not paid** or **short paid** or **erroneously refunded**, or **input tax credit wrongly availed or utilised**, the proper officer may **initiate action u/s 73 or section 74**.

Example: A notice for audit was served to M/s. X Ltd, on 06.07.2019. The required information was furnished by M/s. ABC Ltd, on 22.08.2019. The audit officers visited the place of business on 15.09.2019. What is the last date within which the audit is to be completed?

Audit is to be completed within 3 months from 22.08.2019, viz., 21.11.2019 or within an extended period of 6 months, if extended by the Proper Officer. The extended period would be 21.02.2020.

2.2. SPECIAL AUDIT [SECTION 66]

(A) Who can give order?

Any officer not below the rank of Assistant Commissioner with the prior approval of the Commissioner, issue a direction to the registered person in **Form GST ADT-03** to get his records including books of account examined and audited by a **chartered accountant** or a **cost accountant** as may be nominated by the Commissioner and specified in the said direction.

(B) When can special audit be conducted??

If *at any stage of scrutiny, inquiry, investigation or any other proceedings* before him 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

**(C) Time limit to complete the audit**

The Chartered Accountant / cost accountant as nominated by Commissioner shall submit a report of such audit duly signed and certified by him within **90 days** to the said Assistant Commissioner mentioning therein: This period can be further extended by **another 90 days** in following cases:

- on an application made to him in this behalf by the registered person / the chartered accountant or cost accountant; or
- for any material and sufficient reason.

(D) Who will bear the expenses of audit?

The expenses of examination and audit of records including remuneration of such Chartered Accountant or Cost Accountant, shall be determined and **paid by the Commissioner** and such determination shall be **final**.

(E) How Special Audit Report to be dealt with?

The registered person shall be given an **opportunity of being heard** in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings **against him** under this Act or the rules made thereunder.

On conclusion of special audit, the registered person shall be informed of the findings of special audit in **Form GST ADT-04**.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, **the process of demand and recovery will be initiated against the registered person under section 73 or section 74**.

Difference between Section 65 and 66

| Section 65 | Section 66 |
|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| It is a departmental audit | It is a special audit |
| It is conducted by officers of the department authorised by the commissioner | It is conducted by CA/Cost accountant nominated by the commissioner |
| Prior notice of 15 days is required | No such notice/intimation is required |
| The conclusion of the audit is given in 3 months, further extension of 6 months is allowed | The conclusion of the audit is given in 90 days, further extension of 90 days is allowed |
| Audit reports should be intimated soon upon completion of the audit | Audit reports should be shown to AC/DC |
| No specific provision of opportunity of being heard. | Yes, where material gathered during the audit is to be used in any proceedings against the auditee |
| Issue SCN u/s 73 | Issue SCN u/s 73 |



ASSESSMENT & AUDIT

Forms prescribed in connection with Audit

| Forms | Deals with |
|-------------------|-----------------------------------------------------------------------------------|
| GST ADT 01 | Notice for conducting the audit |
| GST ADT 02 | Information to taxpayer about findings of the general audit by the proper officer |
| GST ADT 03 | Communication to the registered person for conduct of special audit u/s 66 |
| GST ADT 04 | Information of Findings upon Special Audit |

ANALYSIS OF KEY ADVANCE RULING

A.C.L. Education Centre (P) Ltd. v UOI 2014 (33) S.T.R. 609 (All.)

Facts of the case: Central Tax Department of GST issued intimation under Section 65(3) of the CGST Act, 2017, demanding necessary documents from the petitioners for making a reference to conduct an audit. The petitioners objected and also challenged the vires of Section 65(3) of the CGST Act, 2017, inter alia, on the ground that the provisions of Section 65 of the CGST Act, 2017 are contrary to the provisions of section 66 of the CGST Act, 2017.

Decision: In the light of the aforesaid discussion, the High Court held that Section 65 of the CGST Act, 2017. It is in consonance with section 66 of the CGST Act, 2017.

Suresh Kumar P.P. v. Deputy Director, Directorate General of GST Intelligence [2021] 123 taxmann.com 376 (Kerala)

Facts of the Case: The petitioners were Managing Director and Director of a Media Company engaged in providing cable services to its customers as Multi-Service Operator under the regulation issued by the Telecom Regulatory Authority of India (TRAI). The GST Authorities initiated search and seizure proceedings against them. The authorities issued notice and further passed an order of seizure. Thereafter, the GST Authorities issued notice to petitioners under section 65 for auditing of books. The petitioners submitted that they had never defaulted to any of the statutory responsibilities. They filed the writ petition seeking relief in this regard.

Decision: The Honourable High Court observed that provisions of the CGST Act, 2017 like inspection of the premises, powers of arrest and summons to produce documents have been incorporated with the aim to prevent evasion of GST at the hands of unscrupulous taxpayers. The process issued for auditing of the books as well as the order of seizure of the documents would help the department in co-relating the entries in the documents and at the time of auditing of the account. Therefore, it would be too premature to comment upon the act of the GST Authorities and writ petition accordingly dismissed. As a result, Authorities can initiate audit and investigation simultaneously in GST

**Tuli Motors v. Union of India - [2021] 128 taxmann.com 336 (Delhi)**

Facts of the Case: The petitioner received the show cause notices in the year 2021 which were related to the old assessments for the period 2015 to 2017. It filed writ petition and submitted that the old assessments for the period 2015 to 2017 cannot be reopened in the year 2021 and emphasized that after the repeal of the Chapter V of the Finance Act, 1994 by the Goods and Services Tax Act, 2017, there is no power to initiate any fresh proceeding under the repealed Act i.e. Chapter V of the Finance Act, 1994. The department submitted that this Court, in *Vianaar Homes Private Limited v. Assistant Commissioner (Circle 12)*, [2020] 121 taxmann.com 54 (Delhi), has held that there is power to initiate fresh proceedings under Chapter V of the Finance Act, 1994 despite coming into force of the Goods and Services Tax Act, 2017.

High Court Held: The Honorable High Court after hearing both the parties directed that proceedings pursuant to the impugned Show Cause Notices and summons shall continue but the final orders shall not be given effect to till disposal of the writ petition.