



## Chapter 16 - Assessment and Audit

### Part A - ICAI TYK

1) Is summary assessment order to be necessarily passed against the registered person?

Sol: No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the registered person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the registered person and will be assessed to tax.

2) Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

Sol: Yes, principal of natural justice is must to be followed before passing assessment order against an unregistered person seeking to impose any financial burden on him.

3) Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?

Sol. Assessment order passed by the proper officer may be withdrawn in following cases:-

(i) Assessment of non-filers of returns-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within 60 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, 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in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.

(ii) Summary assessment-As per section 64(2) of the CGST Act, 2017, a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

4) Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.

OR

How many types of audit are prescribed under GST Act. Briefly explain each. [PYQ Nov'18]

**Sol. Audit by Tax authorities under section 65 of the CGST Act, 2017:-**

A) The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

B) The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

**Special Audit under section 66 of the CGST Act, 2017:-**

A) The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

B) Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

5) Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017.

Sol. If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:

(i) conduct audit of the registered person; or

(ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or.

(iii) exercise the powers of inspection, search and seizure with respect to registered person, or

(iv) proceed to determine tax & other dues of registered person u/s 73 or 74 of the Act.

6) Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.

Sol. As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if 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.

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.

- 7) Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12<sup>th</sup> January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies the goods on 25<sup>th</sup> January thereafter paying the tax on provisional basis in respect of said consignment on 19<sup>th</sup> February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21<sup>st</sup> March, a tax of Rs. 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9<sup>th</sup> April. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21<sup>st</sup> March, a tax of Rs. 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9<sup>th</sup> April and tax was refunded to it on 5<sup>th</sup> June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

Sol. Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25<sup>th</sup> January under provisional assessment is 20<sup>th</sup> February.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of the consignment of goods supplied:

$$= \text{Rs. } 1,80,000 \times 18\% \times 48/365$$

$$= \text{Rs. } 4,261 \text{ (rounded off)}$$

If, in the given case, it is assumed that consequent to the final assessment order passed on 21<sup>st</sup> March, a tax of Rs. 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows: Section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax. However, since in given case, refund has been made (05<sup>th</sup> June) within 60 days from date of receipt of application of refund (09<sup>th</sup> April), interest is not payable to Kulbhushan & Sons on tax refunded.

### **Part B - PYQs/RTPs/MTPs**

- 8) Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 20XX. The tax payment on a provisional basis was made in respect of all the three consignments on 20th May, 20XX.

Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 20XX, a tax of Rs. 1,20,000 and Rs. 1,50,000 became refundable on 1st and 3rd consignments, whereas a tax of Rs. 1,20,000 became due on 2nd consignment. Divy Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 20XX and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it for the 1st consignment on 8th September, 20XX, whereas for the 3rd consignment on 18th September, 20XX. Customers of Divy Trader who purchased the consignments have not taken Input Tax Credit (ITC). Determine interest payable and receivable, if any, under CGST Act, 2017 by Divy Trader. [PYQ Nov'18]

Sol. Where tax becomes due consequent to order of final assessment, interest is payable @ 18% p.a., from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, the due date for payment of tax on goods cleared on 28.04.20XX under provisional assessment is 20.05.20XX.

Thus, interest is payable in respect of the 2nd consignment.  
= Rs 1,20,000 × 18% × 53 [21.05.20XX - 12.07.20XX] / 365  
= Rs 3,136 (rounded off)

Further, section 56 of CGST Act, 2017 provides that where **tax becomes refundable** consequent to the order of final assessment, **interest is receivable @ 6% p.a.** from the date immediately **after the expiry of 60 days from the date of receipt of refund application till the date of refund of such tax.**

In the given case, since refund of tax of 1st consignment has been paid on 08.09.20XX which is within 60 days from the date of receipt of application of refund (12.07.20XX), interest is **not** receivable on tax refunded in respect of 1st consignment.

However, interest receivable in respect of **3rd consignment** is as follows:

60 days from the date of receiving the refund application expire on 10.09.20XX.

= Rs 1,50,000 × 6% × 8 [11.09.20XX - 18.09.20XX] / 365

= Rs. 197 (rounded off).

9) "A tax officer can suo-moto ask the assessee to pay tax on provisional basis." Examine the validity of the statement. [PYQ]

Sol. The said statement is **not valid**. As a taxpayer has to pay tax on a **self-assessment basis**, a request for paying tax on a **provisional basis** has to come from the taxpayer, which will then have to be permitted by the proper officer. In other words, **no tax officer can suo-moto order payment of tax on a provisional basis**.

This is governed by **section 60 of the CGST Act**. Tax can be paid on a provisional basis **only after** the proper officer has permitted it through an order passed by him. For this purpose, the taxable person has to make a **written request** to the proper officer, giving reasons for payment of tax on a provisional basis. Such a request can be made by the taxable person only in such cases where he is unable to determine:

- (a) the value of goods or services to be supplied by him, or
- (b) determine the tax rate applicable to the goods or services to be supplied by him.

In such cases the taxable person has to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

10) Explain the provisions relating to assessment of unregistered persons by the proper officer under section 63 of the CGST Act, 2017. [PYQ July'21]

Sol. Notwithstanding anything to the contrary contained in section 73 or section 74 of the CGST Act, 2017, where a taxable person—

- **fails to obtain registration** even though liable to do so; or
- **whose registration has been cancelled** for any of the specified reasons\*, but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said taxable person to the best of his judgment for the relevant tax periods.

**Specified reasons for cancellation are as under:**

- a. A registered person has contravened such provisions of the CGST Act or the rules made thereunder as may be prescribed; or
- b. Has not furnished returns for a continuous period of **6 months** (in case of a registered person who is required to furnish returns on a **monthly** basis);
- c. Has not furnished returns for a continuous period of **2 tax periods** (in case of a registered person who is required to furnish returns on a **quarterly** basis);

- d. Has not furnished the return for a financial year beyond **3 months** from the due date of furnishing the said return (in case of a registered person who has opted for **composition levy**);
- e. Any person who has taken voluntary registration u/s 25(3) of the **CGST Act** has **not commenced business within 6 months** from the date of registration; or
- f. Registration has been obtained by means of fraud, willful misstatement, or suppression of facts.

This point is listed under the "**Specified reasons for cancellation**" of registration as per the **CGST Act, 2017**. It means that if a registered person has obtained registration fraudulently by misrepresenting facts or suppressing important information, their registration can be **canceled** by the tax authorities.

However, no such assessment order shall be passed without giving the person an opportunity of being heard.

11) Prithviraj Ltd., registered under **GST** in Uttar Pradesh, is served a notice for audit by the tax authority under **GST** law on 10th July. The records and other documents as sought by the tax authority have been made available by Prithviraj Ltd. on 25th July. The tax authority visits the office of Prithviraj Ltd. located in Noida, Uttar Pradesh on 8th August for conducting audit.

Determine the time-limit within which the audit under section 65 of the **CGST Act, 2017** is required to be completed assuming that no extension is permitted in the given case. [RTP - Nov. 2021]

**Sol.** As per section 65(4) of the **CGST Act, 2017**, audit shall be completed within a period of 3 months from the date of commencement of the audit. Further, commencement of audit means the later of the following:

- (a) the date on which the records and other documents, called for by the tax authorities, are made available by the registered person, or
- (b) the actual institution of audit at the place of business of the taxpayer.

Accordingly, in the given case, date of commencement of audit is later of:

- (a) the date on which the records and other documents are made available by Prithviraj Ltd., i.e. 25th July, or
- (b) the actual institution of audit at the place of business of Prithviraj Ltd., i.e. 8th August.

Thus, date of commencement of audit is 8th August.

Hence, audit shall be completed within 3 months from date of commencement of audit (8<sup>th</sup> August).

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