

Assessment, Audit, Search & Seizure

Department Power



Administrative Power (On the basis of Return/Statement/Documents/Records)

Investigative Power

Assessment

sec 2(11) "Assessment" means determination of tax liability under this Act and includes > self-assessment > re-assessment, > provisional assessment, > summary assessment and > best judgment assessment.

Registered person

Sec 63 - Unregistered Person Best Judgement Assessment [BJA]

- ⇒ **BJA:** > If assessee fails to obtain registration even though he is liable to do so or > Registration has been cancelled but liable to pay tax. **PO assess tax liability by BJA.**
- ⇒ **Issue of notice:** PO issues a **notice & give 15 days** time to reply & > then issue BJA order & summary thereof shall be uploaded electronically. (No assessment order pass without giving an opportunity of being heard)
- ⇒ **Time limit of order:** **Assessment order shall be issued within 5 years** from due date of filing annual return for the FY to which tax not paid pertains.

Filing the Return

Sec 59 : Self Assessment

Every **RP shall self assess the liability & tax payable** & then file return u/s 39 for each tax period

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

- ⇒ **BJA:** > where R.P. fails to furnish returns u/s 39 (Periodical), or u/s 45 (Final returns) & > even after the service of **notice u/s 46**, taxable person fails to file return within 15 days
- ⇒ **Time limit of order:** PO shall issue BJA order within 5 years from due date of annual return for the FY to which tax not paid relates.
- ⇒ **Withdrawal of BJA order:** When assessee furnishes a valid return within **60 days** of service of BJA order, then such BJA order shall be deemed to have been withdrawn. But liability of interest (@18%pa) + late fee (200/- per day max 10,000/-) shall continue.
- ⇒ **Extended period:** Extended period of upto 60 days is allowed on payment of additional late fee of ₹ 200 per day (CGST: ₹ 100 & SGST: ₹ 100) from 61st day till date of filing return.

Audit

sec 2(13) "Audit" means the ⇒ examination of records, returns and other documents maintained or furnished by the registered person as per law. ⇒ to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of law.

Sec 65 Departmental Audit

1. **Audit Authority:** Commissioner/ Authorised officer undertake audit of RP under this section..
2. **Notice to R.P.** for audit to be given at least **15 working days** prior to the conduct of audit.
3. **Audit Period:** F.Y. or part thereof or multiples thereof.
4. **Place of Audit:** POB of RP or departmental office.
5. **Time Limit for Completion:** Within **3 months** from the date of commencement. (extension for further 6 months)
6. **Commencement of audit** shall be the Date > on which the records are made available or > the actual institution of audit at the POB, **whichever is later.**
7. **Conduct of Audit:** **R.P.** Shall > facilitate verification of accounts & records > provides information to authority as required > render assistance
PO may inform **RP about** discrepancies notice & **R.P.** may file the reply for that.
8. **Audit Findings & Observations** to be intimated within 30 days from the completion of audit.
9. **Tax Avoidance or wrong ITC is detected,** Action u/s 73/74/74A for determination of Tax amount will be taken up.

Sec 66 Special Audit

1. **Situations:** During scrutiny, inquiry, investigation or any other proceedings, in which PO is of opinion that > value has not been correctly declared or > wrong availment of ITC by **R.P.**
2. **Direction for Audit:** shall be made with prior approval of commissioner to get record (including books of account) examined by CA/CMA.
Note: Special audit shall be conducted, even audit has been conducted under any provisions of the GST Act or any other law.
3. Special Audit u/s 66 shall be conducted by a **CA or a CMA**, who shall be nominated by Commissioner,
4. Auditor shall submit his report to AC, within 90 days. (extendable for further 90 days)
5. Audit expenses to be determined & paid by comm.
6. **Tax Avoidance or wrong ITC is detected,** action u/s 73 or 74/74A for determination of Tax amount will be taken up.

Access

Sec 71 Access to Business Premises

- 1) Duly empowered officer can access to any business premises of **Registered Person.**
- 2) During access, PO can inspect
 - Books of Accounts
 - Documents
 - Computers (including programs & software)
 - other things as required
- 3) Person in charge of premises bound to furnish such documents to officer or to audit party deputed by PO to carry out special audit
- 4) Records covers- records prepared by **R.P.**, Trial balance, audited FS, cost Audit report, Income tax audit report and other relevant records.

Chapter 20 - Inspection, Search, Seizure & Arrest

Sec 60 : Provisional Assessment

- Provisional Assessment : If taxable person is unable to determine-
 - Value of Supply or
 - Applicable tax rate
 - He shall request to PO, by furnishing an application stating reasons of provisional assessment.
 - After asking necessary documents, PO shall accept /reject the request, by an order, **within 90 days** from date of receipt of request, if P.A. is accepted then value or rate is specified by P.O.
- Bond with security : The Order indicates- rates/ values/ Bond & security (Bank guarantee) & the value of security shall be $\leq 25\%$ of amount covered under the bond

Final assessment order passed by respective officer after taking into A/C such information which is required for final assessment.

Final Assessment : PO - within 6m from PA order
 Extension by Joint Comm./Add. Comm - 6 months
 Extension by Commissioner - 4 Years

If FAT > PAT	If FAT < PAT
Tax payment - Differential tax is payable	Tax Refund - Subject to doctrine of unjust enrichment
Interest - 18% (day basis)	Interest - @ 6% p.a.
Period of Interest - 1st day from date of payment of PAT till date of actual payment.	Period of Interest - If refund is not paid within 60 day of application then interest is payable from 61st day till the date of payment of refund.

Release of Security: After FA order, applicant shall file application for release of security. PO to ensure that applicant has paid amount as per FA or he will release security by an order within 7 working days from date of receipt of such application.

Sec 61 : Scrutiny of returns

- PO to verify correctness of returns (as selected by him) furnished by RP w.r.t available information.
- If discrepancies found, PO shall issue notice and person shall give a necessary explanation within 30 days from service of notice.

Satisfactory explanation given by R.P.	Discrepancies accepted by R.P.	Discrepancies not accepted by R.P. or Not corrected after acceptance by R.P.
<ul style="list-style-type: none"> No action by PO Inform to RP 	<ul style="list-style-type: none"> Pay Tax + Interest Inform PO about payment of such Tax & interest 	<ul style="list-style-type: none"> PO may initiated appropriate action

Sec 65:- GST Audit by tax Authorities OR
 Sec 66:- Special Audit OR
 Sec 67 :- Inspection, Search & Seizure

OR
 Tax Determination
 Sec 73 - Bonafide
 Sec 74 - Malafide
 Sec 74A -

Investigative Actions

Inspection(u/s 67(1))

- Meaning: An act of examining something by the proper officer on reason to believe suppress something recorded in writing
- Softer provision than search

Circumstances:- A Joint Comm. as reason to be believe that

- | | | |
|---|---|------------------|
| TP | Transporter | Warehouse Keeper |
| <ul style="list-style-type: none"> Suppressed any transaction of supply of goods or services Suppressed stock in hands Claimed excess Input Tax Credit Contravened any provision to evade tax | <ul style="list-style-type: none"> Kept goods which have escaped payment of tax Kept goods/A/c in a manner likely to cause evasion of Tax | |
- Power :- Inspect the place of business of TP/ transporter/warehouse keeper

Sec 68: Inspection of 'goods in movement'

Inspection can be done of the conveyance, carrying a consignment of value exceeding specified limit (₹ 50,000 for E-Way bill). The person in charge of the conveyance has to produce prescribed documents /devices(E-way Bill) for verification and allow inspection. Inspection during transit can be done even without authorisation of Joint Commissioner.

Search/Seizure u/s 67(2)

- Meaning: An attempt to
 - Find Something
 - Discover Evidence of a crime by a careful examination of place, person, subject, etc.

Requirements

- Search Warrant :-
 - Issued by Joint Commissioner or above rank officer
 - before start of search
- A Lady Officer
- Two independent witnesses
- Panchnama signed by owner & witness containing list of goods/documents seized

Power

Power of officer

- Search & seizure/ Detain goods (liable to confiscation) & documents /books/things (relevant for any proceeding)
- Break open door, almirah or box if access denied
- Seal premises if access denied

Right to safeguard of person

- seized goods/doc. not to be retained beyond necessary period. It should be returned within 30 days of :
 - Issue of SCN
 - 6 months from seizure (whichever is later) (extension: Further 6 months)
- Photocopies of doc. can be taken by person
- Inventory of seized goods to be made by officer

Arrest u/s 69

- Powers - Commissioner who has following reason to believe then he can authorise arrest of
 - Taxable person
 - Transporter
 - Warehouse keeper
 only where person accused of offences specified u/s 132 and tax amt. involved is more than ₹ 2 Cr.

Sec 72 :- officers who are required to assist proper officers Following officers have been empowered and are required to assist CGST officers in the execution of CGST Act. The categories specified are as follows:

- Police;
- Railways
- Customs;
- Officers of State/UT/ CG engaged in collection of GST
- Officers of State/UT/ CG engaged in collection of land revenue;
- All village officers;
- Any other class of officers as may be notified by the CG/SG

Sec 64 : Summary Assessment

- Summary Assessment: When PO has evidences showing tax liability of a person & delay adversely affects revenue, he shall pass a summary assessment order. (prior approval from AC/JC)
- Withdrawal of order: If Assessment order is erroneous, then on application of taxable person within 30 days of such order or on his own motion AC/JC may withdraw such order and may instead follow the procedure of sec73 or 74 or 74A
- Deemed taxable person: If taxable person is not ascertainable & such liability pertains to Supply of goods = Person in charge (driver or etc.) shall be liable to be assessed.