



# Handling GST Assessment and Departmental Notices

CA. Ankit Chande  
JDT & Associates

Mulund CA CPE Study Circle  
16<sup>th</sup> April, 2022

---



# Legal Provisions

---



# Audit, Assessment & Investigation – Different powers

## Assessment – Chapter XII

- **Self Assessment (S. 59)**
- (Provisional Assessment (S. 60)
- **Scrutiny of Returns (S. 61)**
- Assessment of Non-filers of returns (S. 62)
- Assessment of unregistered persons (S. 63)
- Summary assessment in certain special cases (S. 64)

## Audit – Chapter XIII

- Audit by Tax Authorities (S.65)
- Special Audit (S. 66)

## Investigation – Chapter XIV

- Power of inspection, search & seizure (S. 67)
- Inspection of goods in movement (S. 68)
- Power of Arrest (S. 69)
- Power to summon persons to give evidence and produce documents (S. 70)

## Demands & Recovery – Chapter XV

- **Adjudication of taxes – Matters not involving fraud etc. (S. 73)**
- **Adjudication of taxes – Matters involving fraud etc. (S. 74)**



# Concept of Self Assessment

---





## Concept of Self Assessment

---

- *Sec. 59 - Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.*
- *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;*
- **Meaning –**
  - A system that makes a taxpayer responsible for assessing its own liability.
  - Declaration of the details in the return and filing of the same completes the self-assessment.



## Concept of Self Assessment – Legal Provisions

---

- Sec. 75(12)

*Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*

- Sec. 79 – Deals with various modes of recovery (e.g. garnishee order, adjustment against refunds, confiscation of property, etc.)
- Explanation to Sec. 75(12) - *For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*
- Whether the tax payable declared in GSTR 1 be considered as self-assessed when the filing of GSTR-3B is pending after the due date ?
- Explanation provides for the inclusion only if the tax payable has been declared in GSTR 1 but has not been included in the return “furnished”.



## Concept of Self Assessment – Issues

---

### Mistakes in GSTR 1/3B - Instruction No. 01/2022-GST dated 07.01.2022

- Officer required to send communication (with DIN) directing the taxpayer to either pay the short-paid tax or explain the reasons for short-payment within a reasonable time as prescribed in the communication
- If the taxpayer is able to justify the differences between GSTR 1 & GSTR 3B to the satisfaction of the officer, then recovery u/s 79 is not be initiated.
- If the taxpayer fails to pay or reply or fails to explain the reasons for the difference to the satisfaction of the officer, then recover u/s 79 may be initiated
- Fails to consider situation where the officer is not satisfied with the reply but the taxpayer has merits in his case – Can direct recovery be still permissible ?
- Fails to consider situation where even after the detection of the error, taxpayer can correct GSTR 3B/GSTR 1 (within the period stipulated u/s 37 and 39) – Can a premature direct recovery be still permissible ?



# Scrutiny of Returns – ASMT-10

---







## Provisions with regard to Scrutiny of returns

---

- **Scrutiny of Returns : Section 61(1)**

*(1) The proper officer may **scrutinize the return** and related particulars furnished by the registered person to **verify the correctness of the return** and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.*

- **Definition of Return : Section 2(97)**

*(97) —return means **any return prescribed** or otherwise required to be furnished by or under this Act or the rules made thereunder;*

- **Scrutiny of Returns: Rule 99(1)**

*(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.*

# Process for Scrutiny of Returns

- Options available with Taxpayers : Rule 99(2)

Option 1	Option 2
The registered person may <u>accept the discrepancy</u> mentioned in the notice issued under sub-rule (1), and pay the tax, interest and arising from such discrepancy and inform the same <b>OR</b>	<u>furnish an explanation</u> for the discrepancy in <u>FORM GST ASMT-11</u> to the proper officer.

- Intimate about payment made to Proper Officer

DRC-03 + ASMT 11	DRC-04
Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement. <b>R.142(2)</b>	Acknowledgement of acceptance of payment made voluntarily. <b>R.142(2)</b>



## Process for Scrutiny of Returns

---

- **Obligation of Proper Officer :Rule 99(3)**

*(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.*

### **S.61(3) – Negative Consequences of non compliance**

- In case **no satisfactory explanation is furnished** within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him OR
- where the registered person, after accepting the discrepancies, **fails to take the corrective measure** in his return for the month in which the discrepancy is accepted
- the proper officer **may** initiate appropriate action including those under-
  - Section 65 (Audit by Tax Authorities) or
  - Section 66 (Special Audit)or
  - Section 67,(Power of Inspection, search and seizure) or
  - **proceed to determine the tax and other dues under section 73 or section74.** (Initiate SCN proceeding for determination of tax and other dues)



## Instruction No. 02/2022-GST dated 22nd March 2022

---

CBIC Instructions No. 02/2022-GST dated 22<sup>nd</sup> March 2022 - Extract

- Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19
- Interim SOP
- Directorate General of Analytics and Risk Management (DGARM) to select the GSTINs registered with Central tax authorities, whose returns are to be scrutinized
- DGARM would provide some relevant data (along with likely revenue implication) pertaining to the returns to be scrutinized
- Proper officer? : Scrutiny of returns of a taxpayer may be conducted by **Superintendent of Central Tax** in-charge of the jurisdictional range of the said taxpayer



## **Instruction No. 02/2022-GST dated 22nd March 2022**

---

The proper officer shall conduct scrutiny of returns pertaining to **minimum of 3 GSTINs** per month.

- Scrutiny of returns of one GSTIN shall mean **scrutiny of all returns pertaining to a financial year** for which the said GSTIN has been identified for scrutiny.
- Payments made through **FORM GST DRC-03** may also be taken into consideration while communicating discrepancies to the taxpayer in FORM GST ASMT-10.
- For proceeding under section 73 or section 74, monetary limits as specified in Circular No. 31/05/2018-GST dated 9<sup>th</sup> February 2018 shall be adhered to (**Who can issue SCN?**)
- if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then **he may refer the matter** to the jurisdictional Principal Commissioner/Commissioner through the divisional Assistant/Deputy Commissioner, for the decision whether the matter needs to be referred to Audit Commissionerate or Anti-evasion Wing of the Commissionerate, as the case may be.



## **Timelines –ASMT 10 (as per CBIC Instructions)**

---

- DGARM to periodically select cases for Issuance of Notice in ASMT-10
- Superintendent to finalise scrutiny schedule within 7 days
- Superintendent to issue Notice to taxpayer in ASMT-10
- Reply by taxpayer – Within 30 days or such extended period (ASMT-11)
- Order Accepting reply filed by taxpayer - ASMT-12 within 30 days of reply in ASMT-11
- No reply furnished within 30 days/extended period :SCN in 73 or 74 within 15 days from expiry of 30 days/extended time limits
- Reply filed by taxpayer but found satisfactory : SCN in 73 or 74 within 30 days from reply filed in ASMT-11.
- Reference for Department Audit / Investigation etc
- No reply case : within 45 days from date of issuance of ASMT-10
- Reply filed case : within 30 days from receipt of reply in ASMT-11
- **DIN as per the guidelines mentioned in the Circular No. 122/41/2019-GST dated 5th November 2019.**



## Likely Discrepancies/Parameters

---

- Taxable Supply as per R-1 > Taxable Supply as per 3-B
- Forward charge ITC as per 3B is not matching with ITC as per 2A – **Whether mandatory till 09/10/2019?**
- IGST availed on Import (3B/GSTR-9)not matching with 2A(**courier bill of entry?**)
- 16(4) violation- Suppliers have filed Return after due date of filing Return of September of Next FY (**Is this ok ?**)
- RCM liability as per 3B not matching GSTR-2A.
- Delayed payment interest not paid (Net liability, **ITC availed and not utilized**)
- Blocked Credits availed and not reversed
- Other ITC Reversal not carried out (Rule 42/43)



## Likely Discrepancies/Parameters

---

- ITC claim - Registration of vendor cancelled retrospectively.
- ITC claim - supplier has not furnished Form GSTR-3B
- Outward supply in R-1 vs Outward supply in EWB





## Non reflection in GSTR-2A – Whether ITC to be reversed?

---

- Applicability of Section 41 and 43 of CGST Act 2017 read with Rule 69 to 72 of CGST Rules 2017 vis-à-vis GST Portal system.
- Operationality of Section 43A read with Rule 36(4) of CGST Rules 2017 vide Notification No.49/2019 CT dt 09.10.2019.
- Press Release by CBIC dt 18.10.2018 – It cannot be apprehended that ITC can only be availed on basis of reconciliation between GSTR-2A and GSTR-3B before due date of filing Sept 2018 GSTR-3B.
- Minutes of 27<sup>th</sup> GST Council Meeting held on 04.05.2017 – Recovery from seller and no automatic reversal of ITC from buyer on non payment of tax by seller except few situations.
- GST Audit Manual GSTAM 2019 by CBIC – Get the particulars of tax payment verified at supplier's end whose details are not figuring in GSTR-2A.
- Considerations as per Sr.No.3 of Internal Circular No.02A of 2022 dt 25.02.2022 issued by MH SGST department.
  - Confirmations from Vendor for below 2.5 lakhs
  - More than 2.5 lakhs , Confirmation from vendor with CA Certificate.



## Retrospective cancellation of GSTN

---

- Reference to Section 16(2) of CGST Act 2017 - To be fulfilled on the date of availing credit ?
  - ✓ Possession of Tax Invoice
  - ✓ Goods/services should be received by the recipient
  - ✓ Furnishing return under Section 39
  - ✓ Payment of such tax by vendor to government
  
- No express provisions in act for retrospective cancellation of GSTIN of vendor
  
- In case, violative of Article 14 of Constitution of India.
  
- Judicial precedents in favour of taxpayers.
  - *LGW Industries Ltd. & Ors Vs. Union of India [2021-VIL-868-CAL]*
  - *Bright Star Plastic Industries Vs. Additional Commissioner of Sales Tax (Appeal) [2021-VIL-865-ORI]*



## Voluntary Payment in DRC-03

---

- **Voluntary payment** - Any voluntary payment made by tax payer including payment made after issuance of ASMT-10 or DRC-01A but before issuance of SCN.
- **S.73(5)** - The person chargeable with tax may, **before service of notice (SCN)** under sub-section(1) or, as the case may be, the **statement** under sub-section (3), **pay the amount of tax along with interest payable thereon under section 50** on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and **inform** the proper officer in writing of such payment.
- **S.73(6)** - The proper officer, on receipt of such information, **shall not serve** any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), **in respect of the tax so paid or any penalty payable** under the provisions of this Act or the rules made thereunder.
- **S.73(7)** - Where the proper officer is of the opinion that the amount paid under sub- section(5) **falls short** of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.



## Voluntary Payment in DRC 03

---

### *Rule .142(2)*

- Where, before the service of notice or statement,
  - the person chargeable with tax makes payment of the **tax and interest** in accordance with the provisions of sub-section (5) of section 73 or,
  - as the case may be, **tax, interest and penalty** in accordance with the provisions of sub-section (5) of section 74, or
  - where any person makes payment of **tax, interest, penalty or any other amount due** in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under sub- rule (1A) – (Pre SCN),]
- he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.



## ASMT-10 - Action points

---

- Periodically check Notices at portal
- Reply within time limit prescribed or ask for an extension
- Burden to explain discrepancies is on the tax payer
- Genuine error – Payments of Tax + Interest (before issuance of SCN)
- Explain facts. Submit relevant documents
- Online reply – ASMT-11



## Pre Show Cause Notice – Legal provisions

---

Rule 142(1A)/(2A) : Similar to Pre SCN (Excise and Service Tax)

- Inserted w.e.f 9<sup>th</sup> Oct 2019
- **R.142(1A) - Obligation of Proper Officer to issue Pre SCN**

*The proper officer **may** (~~shall~~), before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of section 73 or sub-section (1) of section 74, as the case may be, ~~shall~~ communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.*

- **Rule 142(2A) – Reply by taxpayer**
- *Where the person referred to in sub-rule (1A) has made **partial payment** of the amount communicated to him **or desires to file any submissions** against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A**. (online)*



**Show Cause Notice- DRC-  
01/02**

---



## Issuance of SCN

---

- Sec. 73(1)

Where it appears to the proper officer that **any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized** for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

- Sec. 74(1)

Where it appears to the proper officer that **any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful misstatement or suppression of facts to evade tax,** he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.





## Issuance of SCN

---

- Whether non-disclosure of information in the return shall tantamount to suppression (Explanation to Sec. 74) ?

- Explanation 2 to Sec. 74 –

*For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information **which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act** or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.*



## Manner of serving the SCN

---

- Rule 142(1)
  - *The proper officer shall serve, along with the*
    - (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,*
    - (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.*
- Case law:
  - M/s Dauji Ispat Pvt. Ltd. vs State of UP and 2 others [2021-VIL-724-ALH]
  - Shri Shyam Baba Edible Oils vs. the Chief Commissioner and Another [2020-TIOL-2016-HC-MP-GST]
- Rule 142 vs. Sec. 169



## Time limit to issue the SCN and order

---

- SCN u/s 73 [Sec. 73(2)]
  - *The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.*
  
- Sec. 73(10)
  - *The proper officer **shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return** for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.*
  
- SCN u/s 74 [Sec. 74(2)]
  - *The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*
  
- Sec. 74(10)
  - *The proper officer **shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return** for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

## Time limit to issue the SCN and order (Sec.73)

Nature of Case	Time limit for issuance of Notice	Time limit for issuance of Adjudication Order
Normal Cases	<p><u>For tax not paid or short paid or ITC wrongly availed or utilized</u></p> <p>Within <b>2 years and 9 months from the due date of filing of Annual Return</b> for the financial year to which such tax or ITC relates (excluding period of stay)</p>	<p><u>For tax not paid or short paid or ITC wrongly availed or utilized</u></p> <p><b>Within 3 (Three) years from the due date</b> of filing of Annual Return for the financial year to which such tax or ITC relates (excluding period of stay)</p>
	<p><u>For Erroneous Refund</u></p> <p>Within <b>2 years and 9 months from date of erroneous refund.</b> (Section 73(2) CGST Act)</p>	<p><u>For Erroneous Refund</u></p> <p><b>Within 3 (Three) years from the date of erroneous refund.</b> (Section 73(10) CGST Act)</p>

## Time limit to issue the SCN and order (Sec.74)

Nature of Case	Time limit for issuance of Notice	Time limit for issuance of Adjudication Order
Fraud/Suppression Cases	<p><u>For tax not paid or short paid or ITC wrongly availed or Utilized</u></p> <p>Within <b>4 years and 6 months from the due date of filing of Annual Return</b> for the Financial Year to which such Tax or ITC relates (excl period of stay)</p>	<p><u>For tax not paid or short paid or ITC wrongly availed or Utilized</u></p> <p>Within <b>5 (Five) years from the due date of filing of Annual Return</b> for the Financial Year to which such Tax or ITC relates (excl period of stay)</p>
	<p><b>For Erroneous Refund</b></p> <p>Within <b>4 years and 6 months from date of erroneous refund.</b> [Section 74(2) CGST]</p>	<p><b>For Erroneous Refund</b></p> <p>Within <b>4 years and 6 months from date of erroneous refund.</b> [Section 74(2) CGST]</p>

## Time limit to issue the SCN and order

---

### Sec. 73

Demand for the period	FY 2017-18	FY 2018-19
Due date for filing ANNUAL RETURN	05.02.2020	31.12.2020
Maximum Time for issuance of SCN	05.11.2022	30.09.2023
Adjudication order to be passed	05.02.2023	31.12.2023

### Sec. 74

Demand for the period	FY 2017-18	FY 2018-19
Due date for filing annual returns	05.02.2020	31.12.2020
Due date for SCN	05.08.2024	30.06.2025
Adjudication order to be passed	05.02.2025	31.12.2025



## Sec. 73 vs. 74

---

- Sec. 75(2)

*Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*

- What if the adjudicating authority concludes that the notice issued u/s 74(1) is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established ?



## Grant of Hearings

---

- Sec. 75(4)
  - *An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*
- Sec. 75(5)
  - *The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.*
  - *Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.*





## Cryptic Orders

---

- Travancore Rayons Ltd. vs. Union of India 1978 (2) ELT 378 (S.C.)
  - The communication does not disclose the “points” which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government.
  - Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious.
  - When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency.

## SCN – Relevant forms

---

- SCN for new issue – Section 73(1)

**R.142(1)(a)** - The proper officer shall serve, along with the Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, **a summary thereof electronically in FORM GST DRC-01**.

- SCN for recurring issues/periodical SCN

**S.73(3)** - Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section(1), on the person chargeable with tax.

**S.73(4)** - The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the **grounds relied upon for such tax periods other than those covered under sub-section (1) are the same** as are mentioned in the earlier notice.

**R.142(1)(b)** - The proper officer shall serve, along with the Notice statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.



## Reply to SCN

---

- **S.73(9)** - The proper officer ***shall, after considering the representation***, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty ***equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher***, due from such person and issue an order.
- **S.74(9)** - The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and **penalty due** from such person and issue an order.
- **R.142(4)** The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in **FORM GST DRC- 06**.
- Time limit to reply SCN: Generally 30 days
- DRC-06: Reply to the Show Cause Notice (online)



## Adjudication/Order

---

- **R.142(5) - A summary of the order** issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.
- **R. 142(6)** - The order referred to in sub-rule (5) shall be treated as the notice for recovery.
- **FORM GST DRC-07** : Summary of the Order (Online)

## Penalty consequences under different situations

If Tax and Interest is paid	Penalty for Normal Case / No Fraud Case (Section 73 CGST)	Penalty for Fraud Case /Mens rea (Section 74 CGST)
Before issue of show cause notice (DRC-01)	<b>No Penalty</b> and No SCN will be issued.[Section 73(6) CGST Act]	<b>15% of Tax Amount</b> and No SCN will be issued. [Section 74(5) CGST Act]
Within 30 days from issue of show cause notice	<b>No Penalty.</b> All proceedings deemed to be concluded [Section 73(8) CGST Act]	<b>25% of Tax Amount.</b> All proceedings deemed to be concluded. [Section 74(8)]
Within 30 days from issue of Order	<b>10% of Tax or Rs. 10000</b> whichever is higher [Section 73(9)]	<b>50% of Tax Amount</b> Section 74(11) CGST Act.
After 30 days from issue of Order	<b>10% of Tax or Rs. 10000</b> <b>whichever is higher</b> [Section 73(11)]	<b>100% of Tax Amount</b>



## Rectification of Order/Notice etc

---

### S.161. Rectification of errors **apparent on the face of record.**—

- any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify
- **any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document
- either on its own motion or where such error is brought to its notice by any officer or by the affected person
- **within a period of three months** from the date of issue of such decision or order or notice or certificate or any other document
- Provided, **no such rectification shall be done after a period of six months** from the date of issue of such decision or order or notice or certificate or any other document
- said period of six months shall not apply where the rectification is purely in the **nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:**
- For adverse rectification, principles of natural justice shall be followed by the authority carrying out such rectification.



## **Audit by Authorities (Sec.65)**

---



## Departmental Audit – Legal Framework

---

- Relevant legal Provisions in the GST Act and Rules viz.,
  - ✓ Section 2(13) – Meaning of the term ‘Audit’;
  - ✓ Section 2(85) – Meaning of the term ‘Place of Business’;
  - ✓ Section 65 – Audit by Tax Authorities;
  - ✓ Rule 101 – Departmental Audit;
  - ✓ Section 71 – Access to the business premises of the taxpayer;
  - ✓ Sec 35 read with Rule 56 – Maintenance of Accounts, Records & Documents.
- GST Audit Manual 2019 issued by the CBIC;
- Manual for Quality Assurance Review & Audit Performance Index 2021 issued by CBIC;
- Trade Circular No.13T of 2020 – General Procedure for GST Audit issued by the Commissioner of State Tax, Maharashtra.





# Departmental Audit – Legal Framework

---

- Meaning of the term **‘Audit’ u/s 2(13) of the Act:**
  - **Examination of**
    - ✓ Records, returns and other documents maintained or furnished by the registered person under this Act, or the rules made thereunder or
    - ✓ under any other law for the time being in force,
  - **To verify**  
the correctness of
    - ✓ Turnover declared,
    - ✓ Taxes paid,
    - ✓ Refund claimed and
    - ✓ Input tax credit availed,
  - **To assess**
    - ✓ his compliance with the **provisions of this Act** or the rules made thereunder.



# Departmental Audit – Legal Framework

---

- **Power to carry out Audit : Section 65(1)**

(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

- **Prescribed period : Rule 101(1)**

The period of audit to be conducted under sub-section (1) of section 65 shall be a **financial year or part thereof or multiples thereof.**

- **Where Audit will be conducted? Section 65(2)**

The officers referred to in sub-section (1) **may** conduct audit at the place of business of the registered person **or** in their office.

- **Frequency:**

As per the GST Audit Manual issued by CBIC- a taxpayer should normally be audited **only after 3 years from the date of last audit**



## Audit by tax authorities - Section 65(1)

---

- The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office;
- **Section 2(85) - Place of business includes–**
  - ✓ a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
  - ✓ a place where a taxable person maintains his books of account; or
  - ✓ a place where a taxable person is engaged in business through an agent, by whatever name called.



## Intimation of Audit by Tax Authorities

---

- **How and when tax payer will be intimated about selection of case for audit?**
  - Sec.65(3) - The registered person shall be informed **by way of a notice not less than fifteen working days** prior to the conduct of audit in such manner as may be prescribed
  - R.101(2) - Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in **FORM GST ADT-01** in accordance with the provisions of sub-section (3) of the said section

# Methodology of GST Audit

---

**Taxpayer Profiling**

**Desk Review**

**Audit Plan**

**Audit Verification**

**Audit Conclusion**





## Time limit for completion of Audit

---

- Time limit for completion of Audit : Section 65(4) of CGST Act

*(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:*

*Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.*

*Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.*



# Final leg of Audit Process - Report

---

## Intimation of Deficiencies : Rule 101 (4)

- The proper officer **may** inform the registered person of the discrepancies noticed, **if any**, as observed in 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. – **Draft Audit Report / Audit Para**

## Report by Authorities : Section 65(6)

- On conclusion of audit, the proper officer shall, **within thirty days**, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

## Rule 101(5) :

- On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM **GST ADT-02**. - **Final Audit Report (FAR)**



## **Extension of Limitation**

---

- **Civil WP No. 3/ 2020 – Extension of Limitation Dated 23.03.2020**
  - This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).
  - It is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. [Power under Article 142 of the Constitution of India]
  - The order is binding on all the Courts/ Tribunals and authorities. SC further ended the above relaxation.
  - CBIC has extended the time-limit for compliance of any actions till 30.06.2021





## Adverse ADT-02, what next ?

---

Where the audit conducted under sub-section (1) 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 under section 73 or section 74. (Demand cum SCN)

**Reply to ADT-02 by either paying tax/interest/penalty and appropriate in DRC-03 or deny allegations made in ADT-02.**



## **Access to business Premises - Section 71**

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person -
  - i. To inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place,
  - ii. For the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
  
- (2) Every person in charge shall, make available to the audit party the following:
  - i. such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
  - ii. trial balance or its equivalent;
  - iii. statements of annual financial accounts, duly audited, wherever required;
  - iv. Cost audit report, if any, under section 148 of the Companies Act, 2013;
  - v. Income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961;
  - vi. any other relevant record

## Broad Areas of Verification by the department

Area	Particulars
<b>Registration</b>	Details of directors, places of business, type of registration etc.
<b>Outward Supplies</b>	Levy, Classification, Rate of tax, Time of supply, Valuation, Exemption, Place of supply, Nature of Tax etc., Reconciliation with books.
<b>Inward Supplies</b>	Eligibility of credit, 2A reconciliation, Incorrect type of credit taken, Tax reversed by the supplier under CN, Reconciliation with books, 180 days payment, ITC availed beyond due date, Reversal of ITC etc.
<b>Reverse Charge</b>	Reconciliation with books, Paid in cash, Interest payment for delay, URD for first 3 months
<b>Refunds</b>	Eligibility, correctness of the claim, supporting documents etc.
<b>Transitional issues</b>	ITC transferred, Correctness & calculations, Supporting documents etc, Taxability of spill over transactions.
<b>Procedural compliances</b>	Manner of documentation maintained (Proper documentation & systematic arrangement), Job work, E-way bill compliances etc.



## Indicative list of records/ documents to be kept ready - Circular 13T of 2020

---

- Financial statement and reports – Balance sheet, tax audit report, Annual financial statement, Cost audit report, trial balance
- Inward-Outward supply summary statement
- RCM ledger and supportive documents
- Inward-Outward supply invoices
- Cancelled invoices due to any reason
- Goods return (inward and outward supply) register along with credit note/debit note details
- Inward supply Register (soft copy)
- Outward Supply register (soft copy)
- Zero rated supply register and supportive documents (commercial invoice, shipping bill, bill of lading, EGM, Bank realization certificate or inward remittance certificate etc.)
- Details of Exempted supply/Supply to SEZ dealer
- Refund claim/ availment details if any (export of good and services, inverted duty structure etc. any type of refund claimed by dealer)
- TDS payment transactions if any
- TRAN-I details (details regarding credit carried forwarded from previous Act to GST Act)
- GSTR 2A-Mismatch, unmatched transactions details.
- E-way bill transactions month wise summary statement and corresponding register



## **Indicative list of records/ documents to be kept ready - Circular 13T of 2020**

---

- In case of services, FIRC (Foreign Inward Remittances), corresponding agreements, invoices Annual Maintenance Contract copies and corresponding invoices if any
- Details of advances received and tax payment for the same
- Other Income/ misc. income
- Reversal / reduction of ITC
- Scrap sales
- Details of exempted outward supply
- Details of zero rated supply
- Non-GST supply
- Job work details (inward and outward side)
- Credit ledger/Input tax credit availment summary (for Capital asset, liability, Refund claim, any other deduction)
- Cash ledger availment summary (for liability, RCM, any other deduction)
- Reversal of ITC within 180 days due to non-payment in 180 days



## Key Accounts, records & documents to be maintained

---

- Ensure the following documents are kept in one file/ folder:
  - Copy of Annual Report (Auditors Report, Tax Audit Report, Directors report, Financials including notes to accounts)
  - All Periodical Returns (GSTR -1 & GSTR 3B)
  - GSTR-9/9C alongwith workings, supportings, reconciliation with Books.
- Working and Monthly Computations duly matched:
  - Sales Register/Report (with Supporting Invoices), Classification Notes; product literature;
  - Credit Note Register/Report
- ITC Statement – (with supporting Invoices)
  - Explanation Statement for eligibility – can be annual
  - Details of Reversal and its computation
  - Reconciliation with Books Vs. GSTR- 1 Vs. GSTR 3B

*Thank You*

---

