

Seminar on GST Annual Return & Audit

Documentation for GST Audit & Key Issues

Presentation by –
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Agenda for Discussion

- Books of Accounts and records to be maintained
- Key Issues related to Input Tax Credit

Requirement to get Books of Accounts audited

35. Accounts and other records –

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

Basis of Maintaining Books of Accounts

- ▶ Which Act governs the maintenance of Books of Accounts?
 - ▶ Companies Act, 2013
 - ▶ Income Tax Act, 1961
 - ▶ GST Law
- ▶ Whether maintenance of books of account under GST law is mandatory?
- ▶ If tax payer is availing the benefit of presumptive taxation under section 44AD and 44AE of Income Tax Act and therefore not required to not to maintain records – whether it is necessary to maintain books of accounts under GST?

Books of Accounts and Records to be maintained

Section 35 - Accounts and other records - (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of —

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed.

Books of Accounts and Records to be maintained

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

Books of Accounts and Records to be maintained

- ▶ Such other particulars as may be prescribed (Rule 46 to 55 of CGST Rules)
 - ▶ Tax Invoice, Bill of supply, Refund Voucher, Receipt Voucher, Payment Voucher, Revised Tax Invoice, Debit Note and Credit Note, Delivery Challan, E-way Bill.
- ▶ Additional records that may be maintained (Rule 56)
 - ▶ Details of goods and service imported and exported including bill of entry and other related documents
 - ▶ Details of supplies attracting Reverse charge (from unregistered person or specified services/goods)
 - ▶ Account of stock received and supplied (opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed off by way of gifts or free samples and balance of stock including raw materials, finished goods, scrap and wastage thereof.

Books of Accounts and Records to be maintained

- ▶ Additional records that may be maintained (Rule 56)
 - ▶ Separate account of advances received/paid and adjustments made
 - ▶ Records for receipt of goods and services from registered person
 - ▶ Records for availment and utilisation of credit
 - ▶ Details of supplier - Names and complete addresses of suppliers from whom he has received the goods or services
 - ▶ Details of customers - Names and complete addresses of the persons to whom he has supplied goods or services
 - ▶ Service provider to maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

Books of Accounts and Records to be maintained

- ▶ Additional records that may be maintained (Rule 56)
 - ▶ Manufacturer of goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.
 - ▶ Works contractor shall keep separate accounts for works contract showing -
 - (a) the names and addresses of the persons on whose behalf the works contract is executed;
 - (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
 - (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
 - (d) the details of payment received in respect of each works contract; and
 - (e) the names and addresses of suppliers from whom he received goods or services.

Books of Accounts and Records to be maintained

- ▶ Additional records that may be maintained (Rule 56)
 - ▶ Agent dealing in goods on behalf of principal to maintain
 - ▶ particulars of authorization received by him from each principal to receive or supply goods or services on behalf of such principal separately;
 - ▶ particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
 - ▶ particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
 - ▶ details of accounts furnished to every principal;
 - ▶ tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Books of Accounts and Records to be maintained

56(15) The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

56(16) Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

Retention of Books of accounts and Records

SECTION 36. Period of retention of accounts. — Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records :

Electronic Records

RULE 57. Generation and maintenance of electronic records. — (1) Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.

(2) The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

(3) Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

Books of Accounts and Records to be maintained

56(17) Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

- ▶ RULE 58 - Records to be maintained by owner or operator of godown or warehouse and transporters.

Industry specific issues

- ▶ **Export under Letter of Undertaking**

- ▶ **LOU Not applied - Circular No. 37/11/2018-GST, dated 15-3-2018**

“4. Exports without LUT : It has been brought to the notice of the Board that in some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.

4.1. In this regard, it is emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.”

- ▶ **Job worker –**

- ▶ **Procedure under Section 143 not followed**

- ▶ **Filing of FORM ITC-04**

- ▶ **Supplies to SEZ – Issues related to endorsement of invoices**

What has to be certified by GST Auditor?

- ▶ Auditor has to examine
 - ▶ Balance Sheet
 - ▶ Profit and Loss Account / Income and Expenditure Account
 - ▶ Cash Flow Statement
- ▶ Auditor has to report that
 - ▶ Books of accounts, records and documents as required under GST Law are properly maintained or not
 - ▶ Particulars furnished in Form GSTR-9C are true and correct

Whether state-wise financials/trial balance are mandatorily required to be audited for multistate GSTIN entities?

Non-disclosure or Suppression of facts

- ▶ Penalty under Section 74 for willful misstatement or suppression of facts
- ▶ Explanation 2 to Section 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 this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Checklist of Documents

- ▶ Business Activities and Process
- ▶ GST Registration Certificates
- ▶ List of Products and services (with HSN codes)
- ▶ Annual Report – Audited financials and other documents
- ▶ Tax Audit Report/ Transfer Pricing Report
- ▶ GST Transition and Implementation Report
- ▶ Gist of Litigations / Assessment Orders/ Audit Letters (Past/Current)
- ▶ Work-flow for GST Compliances
- ▶ Copy of all GST returns filed during July 2017 to March 2018

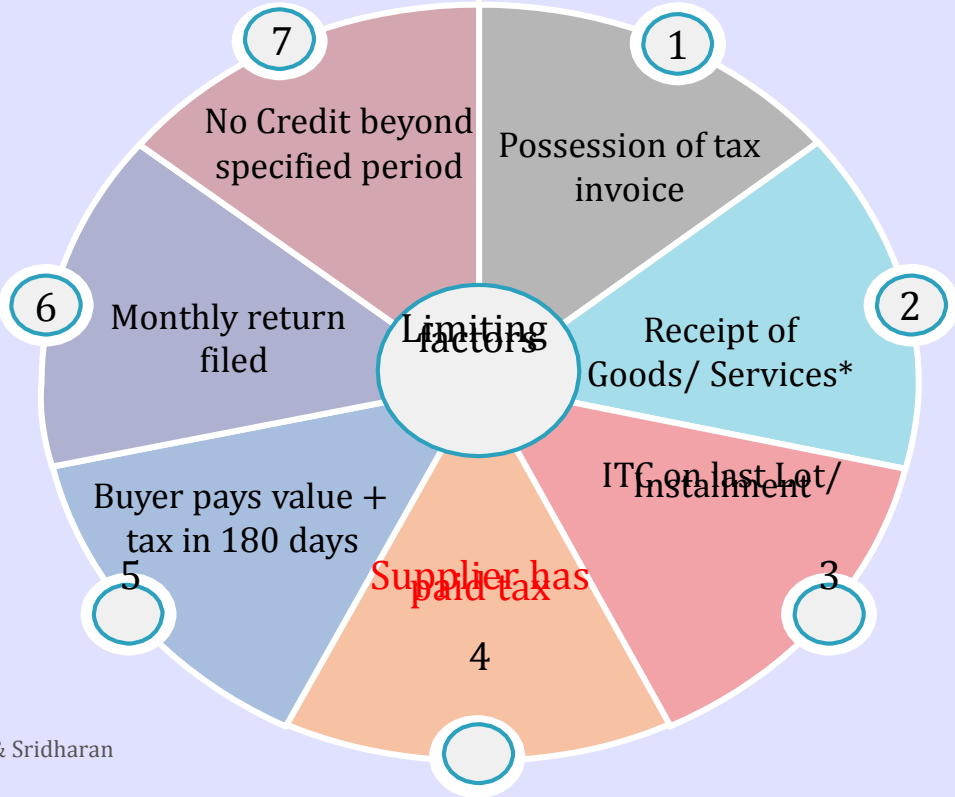
Checklist of Documents

- ▶ Details of Other Incomes, Sale of Fixed Assets, Scrap sales etc.
- ▶ Sample Documents – Invoices, Lorry Receipt, Shipping Bills, Bill of Entry, LUT, FIRC, Customer POs, Stock registers, Self Invoices etc.
- ▶ Key Procurement and Sales Contracts - Check the Tax Clauses
- ▶ Creditors Ageing Report – Compliance with section 16(2)(b) – second proviso (Payment within 180 days from date of invoice)
- ▶ State-wise profit and loss account
- ▶ Comparison of dates when the GST returns are filed with due date for filing GST returns
- ▶ Electronic Credit and Cash Ledger – downloaded from GST portal



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Conditions to avail ITC



Documents for availment of ITC

- RULE 36. Documentary requirements and conditions for claiming input tax credit.** — (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents -
- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
 - (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;
 - (c) a debit note issued by a supplier in accordance with the provisions of section 34;
 - (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
 - (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

ITC Mismatch – GSTR-3B v. 2A

- ▶ Supplier has not filed GST returns and does not respond.
- ▶ Supplier has uploaded invoice as B2C instead of B2B.
- ▶ Supplier has filed the return but invoice is not appearing.
- ▶ Supplier uploaded the invoice on different GSTIN number.
- ▶ Supplier has saved the GSTR-1 and not submitted.

Whether credit can be denied if not reflected in GSTR-2A?

- ▶ **Commissioner of Trade and Taxes Delhi vs. Arise India Limited (2018-VIL-01-SC)** – Held that Section 9(2)(g) of Delhi VAT Act held to be extent it disallows ITC to purchaser due to default of selling dealer in depositing tax is violative of Article 14 and 19(1)(g) of the Constitution of India.
- ▶ **Bombay High Court in Mahalaxmi Cotton Ginning Pressing and Oil Industries vs. State of Maharashtra [2012 (051) VST 0001 BOM]** – Upheld validity of granting credit only after payment by other person.
- ▶ Section 155 - Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.
- ▶ **Bharti Telemedia Ltd. Writ Petition No. 6293/2019 – Delhi High Court – Listed on 18.09.2019**

Whether credit can be denied if not reflected in GSTR-2A?

Section 9 (2) (g) of the DVAT Act

“(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.”

Section 48 (5) of the MVAT Act

“(5) For the removal of doubt it is hereby declared that, in no case the amount of set off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government Treasury except to the extent where purchase tax is payable by the Claimant dealer on the purchase of the said goods effected by him.”

Time Limit for availment of ITC

16. (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains** or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.”

GSTR – 3B is return under section 39?

- ▶ Notification No.10/2017 – Central Tax dated 28th June, 2017
 - ▶ “61. (5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, return in FORM GSTR-3B, in lieu of FORM GSTR-3, may be furnished in such manner and subject to such conditions as may be notified by the Commissioner.”
- ▶ Notification No.17/2017-Central Tax dated 27th July, 2017 (Retrospective effect)
 - ▶ “61. (5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify that return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.”

GSTR – 3B is return under section 39?

- ▶ **Press Release dated 18.10.2018**
 - ▶ 3. With taxpayers self-assessing and availing ITC through return in FORM GSTR-3B, the last date for availing ITC in relation to the said invoices issued by the corresponding supplier(s) during the period from July, 2017 to March, 2018 is the last date for the filing of such return for the month of September, 2018 i.e. 20th October, 2018.
- ▶ **AAP and Co. Chartered Accountants (2019-VIL-35-GUJ)**
 - ▶ Gujarat HC held that FORM GSTR-3B is not in lieu of FORM GSTR-3. It is not a return under section 39 and is applicable only in the circumstances stipulated under sub-rule (5) of rule 61 of the rules. Press Release dated 18.10.2018 is illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B.

Any Questions?



A photograph of a modern interior space featuring a long row of large, dark-framed windows. Several warm-toned, conical pendant lanterns hang from the ceiling, creating a soft, ambient glow. The background shows a blurred view of the outdoors, possibly a cityscape or waterfront, under a clear sky. The overall mood is clean, bright, and contemporary.

Thank You!

CA. Raj Mukesh Khona