

Notices and Assessments under GST

Program organized by WIRC of ICAI

Mehta & Shah – Chartered Accountants

Founder Partner

CA Ashit Shah

Notices under GST

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As per the Cambridge English Dictionary, “Notice” means

- ‘to see or become conscious of something’;
- ‘to bring someone to the attention of’;
- ‘information or a warning given about something that is going to happen in near future’.

- ❖ Notices under GST are nothing but the **communications by the GST Authorities.**
- ❖ A notice so issued, depending upon the purpose or gravity of default or action required from the taxpayer, can be called by different names **e.g. Show Cause Notice (SCN), Scrutiny Notice or Demand Notice.**



Circumstances under which Notices issued

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❖ **GST authorities can issue notices under following circumstances** –

- (i) any hints collected on scrutinizing taxpayer's GST Returns; or
- (ii) based on information received from another Government department/ third parties i.e. Income Tax Department; or

(iii) A few other common grounds -

- ❖ not registering under GST when otherwise required under law; or
- ❖ non filing or any delay in filing of GST returns; or
- ❖ non payment of GST or short payment of GST; or
- ❖ excess claims of Input Tax Credits (ITC)
- ❖ mismatch in details furnished between GSTR-1 & GSTR – 3B or between GSTR – 2B & GSTR-3B, etc.



Types of notices issued under GST

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1. Notice for seeking additional information / clarification / documents relating to application for registration / amendment / cancellation – Rule 9 (2)

- ❖ Where application of registration / amendment / cancellation **is found to be deficient**, notice would be served in **Form GST REG – 03** within a period of 7 working days from the date of submission of application;
- ❖ Reply have to be furnished in **Form GST REG – 04** within a period of 7 working days from the date of receipt of such notice;
- ❖ Proper officer if satisfied with the clarification, information or documents, he may approve the registration / amendment / cancellation;
- ❖ If no reply is submitted or proper officer is not satisfied with the clarification, information or documents furnished by the applicant, **such application may be rejected in Form GST REG 05.**



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Types of notices issued under GST

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2. Notice for why registration certificate not to be cancelled – Rule 22

- ❖ Registration certificate may be cancelled **either by the applicant or by his legal heirs**, in case of death of such person, when
 - (i) business has been discontinued or transferred, amalgamated or demerge;
 - (ii) change in constitution of the business;
 - (iii) taxable person is no longer liable to be registered
- ❖ Registration certificate may be cancelled **by proper officer** –
 - (i) registered person contravenes any provisions of the law as prescribed;
 - (ii) **composition taxpayers** not furnished returns for **3 consecutive tax period**;
 - (iii) **registered person** not furnished return for **continuous period of 6 months**;
 - (iv) tax payer obtained **voluntary registration** and has **not commenced business within 6 months**;



Types of notices issued under GST

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2. Notice for why registration certificate not to be cancelled – Rule 22

- ❖ Proper officer will issue **notice in Form GST REG 17** within a period of 7 working days from the date of receipt of application, requiring to show cause **why certificate not to be cancelled;**
- ❖ Reply to the notice have to be submitted in Form GST REG 18 with a time period specified in the notice;
- ❖ Registration certificate will be **cancelled by issuance of order** in Form GST REG 19 within a period of 30 days from the dated of application submitted by the applicant.
- ❖ Registration certificate will **not be cancelled and proceedings would be dropped** if proper officer is satisfied and he has to pass the order in Form GST REG 20.



Types of notices issued under GST

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3. Revocation of cancellation of registration – Rule 23

- ❖ Registered person **whose registration is cancelled** by proper officer on his own motion may submit an application for revocation of cancellation of registration.
- ❖ Proper officer will issue **notice in Form GST REG 23** requiring applicant to show cause as to why the application submitted for revocation should not be rejected;
- ❖ Applicant shall have **to furnish the reply** within 7 working days from the date of service of the notice, **in Form GST REG 24**;
- ❖ On receipt of information or clarification, proper officer will **dispose of the application of revocation within a period of 30 days** from the date of the receipt of such information.
- ❖ Order of **revocation of cancellation of registration** to be passed in **Form No. GST REG-22** and **rejection order** will be passed in **Form GST REG 05**.

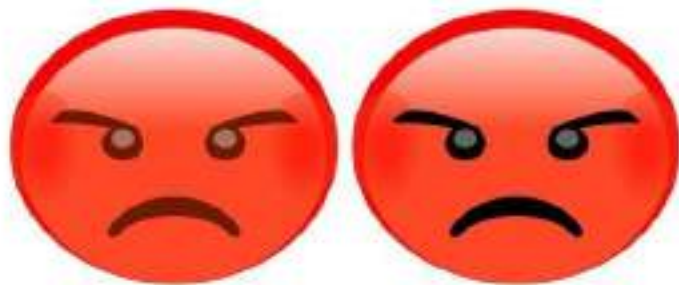


Types of notices issued under GST

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4. Notice to non filers of returns – Rule 68

- ❖ Tax payers **who have not furnished returns** in pursuant to S. 39 (Form GSTR-3B), S. 44 (GSTR-9). S. 45 (GSTR-10) or S. 52 (GSTR-8) **a notice would be issued in Form GSTR – 3A;**
- ❖ Compliance to the notice have to be made **by filing returns along with late fees and interest** if any, within a period of 15 days from the date of receipt of notice;
- ❖ Failure to file the returns will invite **best judgement assessment and penalty** pursuant to S. 122 (xvii)



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Types of notices issued under GST

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5. Notice to composition dealer – Rule 6

- ❖ Tax payers who are under composition scheme **shall remain valid so long as he satisfies all the conditions provided in the law.**
- ❖ When proper officer has reason to believe that registered person is **not eligible to pay tax under composition** or **has contravened the provisions of S. 10** , he may issue **notice in Form GST CMP 05** to show cause within 15 days of the receipt of notice as to **why the option to pay tax under composition shall not be denied.**
- ❖ Tax payer has to provide **justification in Form GST CMP 06** and proper officer have **to issue an order in Form GST CMP 07** within a period of 30 days of the receipt of such reply, **either accepting the reply or denying the option to pay tax under composition.**

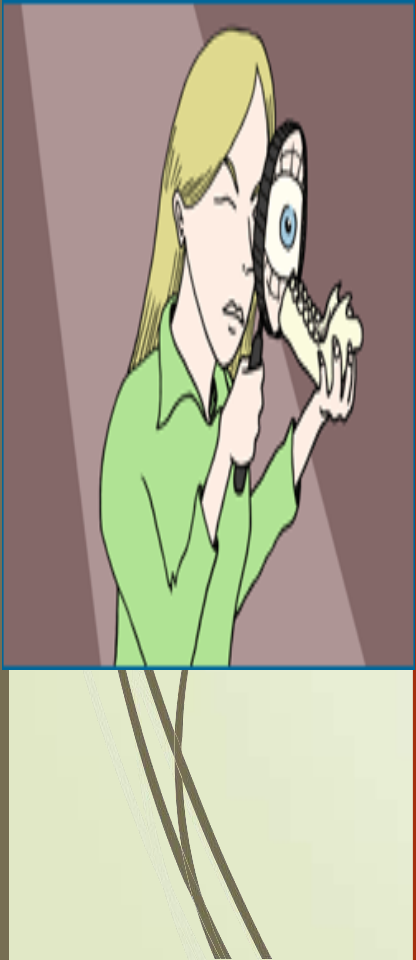


Types of notices issued under GST

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6. Scrutiny of Returns – Rule 99 (1)

- ❖ When any returns furnished by tax payer is selected for scrutiny, proper officer will scrutinize the return and determine whether same is made in accordance with provisions of S. 61.
- ❖ If during the scrutiny **any discrepancy is noticed**, he **shall issue notice to the said tax payer in Form GST ASMT-10** informing him of such discrepancy and seeking his explanation within 30 days from the date of service of notice.
- ❖ Tax payer **have option** either **to accept the discrepancy** mentioned in the notice and pay the tax, interest and any other amount and inform the same or **furnish an explanation for the discrepancy, in Form ASMT-11;**
- ❖ If explanation or information furnished by the tax payer **is acceptable same will be intimated in Form ASMT-12.**



Types of notices issued under GST

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6. Best Judgement Assessment – Rule 100 (2)

- ❖ Where a taxable person **fails to obtain registration** even though liable to do so or **whose registration has been cancelled** but who was liable to pay tax, proper officer may proceed **to assess the tax liability to the best of his judgement. [S. 63]**
- ❖ Proper officer will **issue notice in Form GST ASMT-14** containing grounds on which the assessment is proposed to be made on best judgement basis and allowing him a time of 15 days to furnish the reply. **Taxpayer will also be served with summary thereof in Form GST DRC-01;**
- ❖ Proper officer will **pass the order in Form GST ASMT-15** and **summary thereof shall be uploaded electronically in Form GST DRC-07.**

MAKE SURE

you are perfect before

you judge me!!

Types of notices issued under GST

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7. Notice for conducting audit - Rule 101 (2)

- ❖ Where an audit is to be initiated **at the instances of Department**, which may be for a financial year or part of thereof or multiple thereof, **proper officer shall issue a notice in Form GST ADT – 01** [S. 65]
- ❖ This Departmental audit have **to be completed within a period of 3 months** from the commencement of the audit;
- ❖ Proper officer will intimate the registered person of the discrepancies noticed, if any observed in the audit;
- ❖ **On conclusion of audit**, proper officer **shall inform the findings of audit in Form ADT – 02** and he will initiate action under section 73 or 74 read with Rule 142



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Types of notices issued under GST

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8. Notice for recovery of tax - Rule 142 (2)

- ❖ Where any tax, interest and penalty under S. 73 (1) or 74 (1) is to be recoverable from a taxable person, **a statement or summary have to be issued n Form GST DRC – 02** of the sum payable and **intimate the tax payer in Form GST DRC 01**;
- ❖ Taxable person shall have an option to make the payment of tax, interest and penalty **before the service of notice or statement**, on his ascertainment or as communicated by the proper officer. **Such payment of tax, interest and penalty have to be made in Form GST DRC 03** and intimate to proper officer. Officer will acknowledge the payment in Form GST DRC 04.
- ❖ Once the **proceedings are concluded** officer will issue an **order in Form GST DRC 05**.



Types of notices issued under GST

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9. Notice for sale of goods - Rule 144 (2)

- ❖ Where any amount **due from a defaulter** is to be recovered by selling goods belonging to him, the proper officer first shall prepare an inventory and estimate the market value of such goods and proceed to sell only such amount of goods which may be required for recovering the amount payable along with the administrative expenses incurred for recovery process [S. 79 (1) (b)]
- ❖ **Notice of auction including e-auction** have to be served to such person whose goods are to be sold, **in Form GST DRC 10** clearly indicating the goods to be sold and purpose of sale;



Service of Notice

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- ❖ **Notices or other communication under the GST law can be communicated to tax payers or his representatives, in following manner –**
 - ✓ Hand delivery, either directly or through a messenger including by a courier; or
 - ✓ Registered post or Speed post or a courier with an acknowledgment due, **to the last known place of business of the tax payers;**
 - ✓ E-mail address provided **at the time of registration or as amended from to time;**
 - ✓ Making it available on the common portal i.e. GSTIN;
 - ✓ Publication in newspaper circulating in the locality **in which taxable person resides;**
 - ✓ If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence; or
 - ✓ by affixing it on the notice board of the office of concerned officer or authority who has issued such notice



Notices

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- ❖ GST system has been designed by taking in to cognizance digitalization (reduction in physical paper and reducing personal interaction) so that all the replies to the GST notices can be submitted online on the GST portal (GSTIN);
- ❖ Tax payer can use the digital signature or e-signature to file such reply to the notices;
- ❖ In case the taxpayer receiving the GST notices **does not reply within the stipulated time limit**, he shall be **liable for penalties, which may include prosecution**, and further proceedings as per the provisions of the GST law.
- ❖ **So, it is always advisable to be on the 'right' side of the law so that one is not 'left' out.**



ASSESSMENT

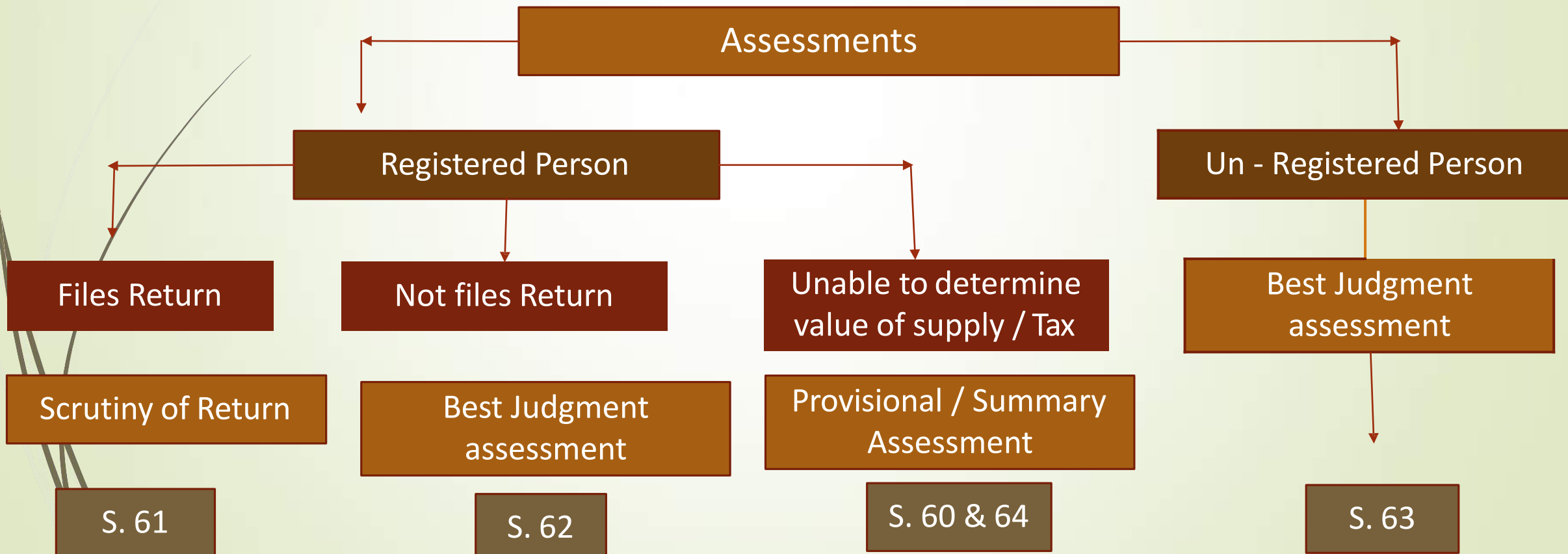
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EVALUATE

Assessments – Chapter XII - S. 59 to S. 64

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“Assessment” means determining the tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. [S. 2(11)]



Self Assessment – S. 59

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Tax period means the period for which the return is required to be filed.

S. 2 (106)

- ❖ 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.
- ❖ **Following persons have to furnish returns under section 39**
 - (i) Person discharging tax liability u/s. 9 – **GSTR – 3B**
 - (ii) Person discharging tax liability u/s. 10 [Composition] – **GSTR - 4**
 - (iii) Person who is required to deduct tax u/s. 51 [TDS] – **GSTR – 7**
 - (iv) Input Service Distributor – **GSTR – 6**
 - (v) Non resident taxable person – **GSTR – 5**

All the returns under GST are based on self assessment by the tax payer

Self Assessment – S. 59

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- ❖ Where any amount of self assessed tax in accordance with a returns furnished u/s. 39, **remains unpaid**, either wholly or partly, or any amount of interest payable on such tax remains unpaid, **the same shall be recoverable pursuant to S. 79.** [S. 75 (12)]
- ❖ **From 1st January, 2022**, an explanation has been inserted in S. 75 (12) which provides that **if any tax liability is included** in details of outward supply i.e. GSTR-1 **but not included in return** furnished u/s. 39 i.e. GSTR-3B, such liability would be considered as “self assessed” tax and recovery proceedings can be initiated pursuant to S. 79.
- ❖ **CBIC had issued guidelines for recovery of tax Instruction No. 01/2022 – GST, dated 7th January, 2022.**



Scrutiny of Return – S. 61 & R. 99

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Proper Officer (PO) has **power to securitize the return** and related particulars furnished by the registered persons (RP) **to verify the correctness of the return.**

If during the scrutiny, **any discrepancies are noticed**, PO will issue him a **notice in Form GST ASMT – 10** informing him of such discrepancies.

PO will provide him opportunity to give explanation thereto **within 30 days from the date of service of notice.** This time limit may be extended at the request of RP.



Scrutiny of Return – S. 61 & R. 99

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Registered person (RP)

Accepts the discrepancy

Pay Tax + Interest + any other amount arising from such discrepancy (No Penalty)

RP have to intimate PO in Form GST ASMT – 11 about payment or explanation

If information submitted by RP is acceptable to PO, he will inform to RP in GST ASMT - 12



Submits explanations to discrepancies

No Satisfactory explanation by RP or
After accepting discrepancies, fails to take corrective measures in his returns.

PO may initiate actions –

- i. Audit by tax authorities S. 65
- ii. Special Audit S. 66
- iii. Search & Seizure S. 67
- iv. Proceeds to determine tax S. 73 & 74

Assessment of non – filers of return - S. 62 R. 100

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If return for the month of June 2019 is not furnished.

BJA Order have to be passed within 5 years from the due date of filing AR for FY 19-20

RP **fails to file returns** as prescribed (S. 39) as well as final return (S. 45)

PO will **serve notice** to such defaulters to file return, **in Form GSTR-3A (S.46)**

RP **still fails** to file the return or comply the notice

PO may proceeds to **assess tax liability** to the **best of his judgment** based on the **information available with him, in Form GST ASMT 13**
[Best Judgment Assessment – (BJA)]

Summary to be uploaded in Form GSTR DRC 07

PO has to pass the Order **within a period of 5 years** from the **due date of furnishing Annual Return**

RP **furnishes valid return** within **30 days of service of Order**, the said Order shall be **deemed to be withdrawn**. However, liability of **interest and late filing fee will be continued**.

Assessment of URP - S. 63 R. 100

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Interest would be payable @ 18% [S. 50]

Penalty payable INR 50,000 [C + S] [S. 125]

- ❖ Where a taxable person **fails to obtain registration** –
 - (i) even though liable to do so; or
 - (ii) whose **registration has been cancelled** under S. 29 (2) **but who was liable to pay tax.**
- ❖ PO **will issue notice** in Form GST ASMT-14 and allowing **time limit of 15 days to furnish reply.**
- ❖ PO may proceed to **assess the tax liability** of such taxable person to the **best of his judgment (Best Judgment Assessment – BJA)** for the relevant tax periods in Form GST ASMT – 15 and summary to be uploaded in Form GST DRC 07
- ❖ Assessment Order will have to be passed **within a period of 5 years** from the **due date of furnishing annual return (AR)** for the said financial year.
- ❖ **Opportunity of being heard** would be given to such person **before passing of the BJA order.**

Provisional Assessment - S. 60 R. 98

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provisional

- ❖ If a taxable person is **not able to determine** (i) **the value** of goods or services or both; or (ii) **rate of tax** applicable on such goods or services or both;
- ❖ he may request proper officer, in writing, electronically in **Form GST ASMT-01**, giving reasons for payment of taxes on provisional basis;
- ❖ The payment of tax on provisional basis **may be allowed**, if the taxable person **executes a bond and with such surety or security** as the PO may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed. However, **security to be furnished** will not **exceed 25% of the amount covered under Bond**.
- ❖ Proper officer will **pass order** in Form GST ASMT-04, with a **period of 90 days** from the date of receipt of such request in Form ASMT-01.

Provisional Assessment - S. 60 R. 98

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- ❖ Proper officer will have to pass the **final assessment order (GST ASMT-07)** within a period of **not exceeding 6 months** from the date of the communication of order, specifying the amount payable by the registered person or the amount refundable, if any.
- ❖ This **period may be extended** by the Joint / Additional Commissioner for a **further period of 6 months** and by the **Commissioner for a period not exceeding 4 years.**
- ❖ RP is liable **to pay interest @ 18%** on any tax payable on the supplies under provisional assessment but not paid on the due date, **from the first day after the due date of payment of tax till the date of actual payment.**
- ❖ In case, where **tax paid is more than the tax payable** consequent upon the final assessment order, **taxable person would be entitled for interest @ 9%.**



Summary Assessment - S. 64 R. 100

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TP may make an application (Form ASMT-17) for withdrawal of Order within 30 days of from the receipt of such order.

Add. / Joint Comm. May withdraw the Order if they find such order is erroneous.

- ❖ PO may, **on any evidence showing a tax liability** of a person coming to his notice, **with the previous permission** of Additional Commissioner or Joint Commissioner, proceed to **assess the tax liability** of such person **to protect the interest of revenue**;
- ❖ PO will **issue an assessment order** (Form GST ASMT-16), if he has sufficient grounds to believe that **any delay** in doing so may adversely affect the interest of revenue and **upload summary** of the order in Form GST DRC-07;
- ❖ 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;

Monetary limit for adjudication

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Sr. No.	Officer of Central Tax	CGST (including Cess) Only	IGST (including Cess) Only	Total CGST+IGST+Cess
1	Superintendent of CGST	Up to INR 10 Lakhs	Up to INR 20 Lakhs	Up to INR 20 Lakhs
2	Assistant / Deputy Commissioner	Above INR 10 Lakhs and up to INR 1 Crores	Above INR 20 Lakhs and up to INR 2 Crores	Above INR 20 Lakhs and up to INR 2 Crores
3	Additional / Joint Commissioner	Above INR 1 Crores without any limit	Above INR 2 Crores without any limit	Above INR 2 Crores without any limit

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Email: ashit@mehtanshah.com

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