



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA GST & INDIRECT TAXES COMMITTEE

2 Days National Conference on GST
Hosted by: WIRC of ICAI
At Mumbai

Topic: Scrutiny of Returns and
Audit by Govt. Department

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S. 65 read with R. 101

AUDIT BY TAX AUTHORITIES

- **The Commissioner may undertake audit of registered person. Issue notice for audit (FORM GST ADT-01):**
 - a) **Name and address of the auditee**
 - b) **GSTIN**
 - c) **1 FY, part of FY or more than 1 FY**
 - d) **15 days time prior to conduct of audit**
- **Audit may be conducted at business premises or in revenue office**



S. 65 read with R. 101

AUDIT BY TAX AUTHORITIES

- **Inform discrepancies and obtain reply**
- **On conclusion of audit, the PO shall within 30 days inform the registered person about audit findings in FORM GST ADT-02**
- **Audit to be completed within 3 months from date of commencement of audit, extendable by another 6 months**
- **Provisions of S. 73 & S. 74 may be separately initiated**



Pre-assessment-audit and adjudication

Cautions: Jurisdiction

1. Whether the assumption of Jurisdiction is correct: Central/ State and on pecuniary limits?

- (i) 9th GST Council Meeting: Dual control but single point of administration**
- (ii) Appointment of CGST Officers and their jurisdiction.** *[NN-2/2017-CT, 19-Jun-2017].*
- (iii) Important shift of DGGI jurisdiction.** *[NN-02/2022-CT, 11-Mar-2022]*
- (iv) Assignment of functions with pecuniary limits.** *[Cir-3/3/2017-GST, 5-Jul-2017 and Cir-31/05/18-GST, 9-Feb-2018]*
- (v) Cross empowerment is notified to the extent of refunds only.**



ASSESSMENT & AUDIT

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Pre-assessment-audit and adjudication

Cautions:

2. Whether the matter is barred by limitation? (**To issue notice at least 3/6 months before*)

FY	S.36 (Books)	S.62 (Non- Filers)	S.63 (URD)	S.73*	S.74*
2017-18	5/7-Feb-26	5/7-Feb-25	5/7-Feb-25	5/7-Feb-23	5/7-Feb-25
2018-19	31-Dec-26	31-Dec-25	31-Dec-25	31-Dec-23	31-Dec-25
2019-20	31-Mar-27	31-Mar-26	31-Mar-26	31-Mar-24	31-Mar-26
2020-21	28-Feb-28	28-Feb-27	28-Feb-27	28-Feb-25	28-Feb-27
2021-22	31-Dec-28	31-Dec-27	31-Dec-27	31-Dec-25	31-Dec-27



ASSESSMENT & AUDIT

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Pre-assessment-audit and adjudication

Cautions:

3. Whether proper procedure followed by the PO as laid down in law and rules.



S. 59

Pre-audit and adjudication

Self-assessment

S.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.

Caution: Before taking any action under the following Chapters-Revenue must have **reasons to believe** to deviate from the self assessment already done.

Chapter: XII: Assessment [S. 59 to 64]

Chapter: XIII: Audit [S. 56 to 66]

Chapter: XIV: Inspection, search, seizure and arrest [S. 67 to 72]

Chapter: XV: Demand and Recovery [S.73 to 84]



S. 59

Pre-audit and adjudication

Where dealer claimed that goods were purchased on payment of tax, but failed to provide mandatory declaration in Form IX-C with other evidence and hence, **reassessment** order was passed, Assessing Officer passed reassessment order on direction issued by **audit party** and not on his personal satisfaction, hence invalid-[2017] 79 taxmann.com 267 (SC)-**Larsen & Toubro** Ltd.-v.-State of Jharkhand



S. 59

Pre-audit and adjudication

Assessee providing telecom services. Revenue in audit observed difference in GTO between return (13.86 Cr.) and Balance Sheet (15.28 Cr.) figures. No demand can be confirmed on the basis of such difference unless it is established that excess amount pertains to providing any service. [Go Bindas v. Comm. ST, Noida, (2019) GSTL-397 (Cestat), Allahabad, 24-Apr-2019]



S. 155

Pre-audit and adjudication

Burden of proof

S.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.



S. 160(1)

Pre-audit and adjudication

Assessment proceedings, etc., not to be invalid on certain grounds

S.160.(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of-



S. 160(1) Pre-audit and adjudication

Assessment proceedings, etc., not to be invalid on certain grounds.

S.160. (1) Cond...

any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in **substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.**



S. 160(2) Pre-audit and adjudication

Assessment proceedings, etc., not to be invalid on certain grounds.

S. 160(2)-The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, **has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.**



S. 169(1)

Pre-audit and adjudication

S. 169. (1) Any decision, order, summons, notice etc. shall be served by any one of the following methods, namely:—

- (i) By giving it directly to the addressee; or**
- (ii) By registered post; or**
- (iii) By e-mail; or**
- (iv) On the Common Portal; or**
- (v) Newspaper; or**
- (vi) Affixation.**



S. 169(1)

Pre-audit and adjudication

In *Suman Jeet Agarwal v. ITO dt. 27-Sep-22 [2022] 143 taxmann.com 11 (Delhi High Court)*

The Court observed-

- **Mere generation of notice under section 148 on ITBA software cannot in fact or in law constitute issue of notice, it is only upon due dispatch, that notice can be said to have been 'issued'.**
- **Date of issue of notice is not important, it is date of signing notice which is important, hence, where notice was dated 31-3-2021 but had been digitally signed on 1-4-2021, date of notice will be 1-4-2021.**



S. 169(1)

Pre-audit and adjudication

- **Where notices were sent through registered e-mail ID of respective Assessing Officers, though not digitally signed, it will be held to be valid service of notice and date and time of dispatch as recorded in ITBA portal will be taken as date of issuance of notice in this regard.**
- **Where notices were only uploaded in E-filing portal of assesseees without any real time alert, date and time when assesseees viewed notices in E-filing portal, as recorded in ITBA portal will be construed as date of service of notice.**



S. 169(1)

Pre-audit and adjudication

- **Where notices were sent to unrelated e-mail addresses, date on which notice was first viewed by assessee on E-filing portal was to be construed as date of issuance of notice.**
- **Where notices were manually dispatched, date and time when notices were delivered to post office for dispatch was to be construed as date of issuance of notice.**



S.71

Procedure to start Audit

- 1. S.71(1) mandates that any officer authorized by the PO not below the rank of JC shall have access to any place of business for the purposes of carrying out any audit.**
- 2. S.71(2) mandates that the taxpayer shall provide requisite documents to the audit party within a period of 15 days.**



R.56

Procedure to start Audit

Electronic maintenance of books



R. 56

Books of Accounts

In case you are maintaining books of account in **electronic form** whether rules 56(8), 56(15) and 57 have been complied with. If yes, give details.

Rule 56(8): Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.



R. 56(15)/ R.57 Books of Accounts

Rule 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**.*

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.



R.57

Books of Accounts

Rule 57: Generation and maintenance of electronic records

*(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.*



CBIC

Procedure to start Audit

CBIC Audit Manual

- (i) The GST Audit Manual 2019 of CBIC states that in case **the taxpayer does not respond** to Form ADT-01, **reminder** shall be issued.
- (ii) If the taxpayer still does not respond then, **another letter** shall be issued giving details of penal consequences.
- (iii) If still does not respond communication may be sent to the **Audit Commissionerate** for appropriate action.



2. RATIOS ANALYSIS



2. RATIO ANALYSIS

- (i) Net Profit Ratio**
- (ii) Gross Profit Ratio**
- (iii) Debtors/ Turnover Ratio**
- (iv) Creditor/ Turnover Ratio**
- (v) Cash Payment/ Gross Tax Liability Ratio**
- (vi) Non-GST Expenses/ GST Expenses Ratio**
- (vii) Addition to Fixed Assets/ Total Assets Ratio**



3. VARIOUS REPORTS



3. VARIOUS REPORTS

Various Reports-

1. Director's
2. Auditor's
3. CARO
4. Form 3CD
5. Cost Auditor's
6. Internal Auditor's



4. YEAR END ENTRIES



4. YEAR END ENTRIES

Year End Entries

- **Provisions made for services availed: ITC can not be claimed in the absence of Invoice**
- **Provisions for Import of services to be made: RCM payable**
- **Provisions for GST/ Interest payable**
- **Provision for reversal of ITC with interest**
- **Provisions of interest from Sundry Debtors**

CH-XII: ASSESSMENT



ASSESSMENTS UNDER GST (Practical Overview)

CHAPTER-XII: Assessment

S. 59

Self-assessment

S. 60

Provisional assessment [R.98]

S. 61

Scrutiny of returns [S.99]

S. 62

Assessment of non-filers of return [S.100]

CHAPTER-XII: Assessment



S. 63

Assessment of unregistered persons
[S.100]



S. 64

Summary assessment in certain special cases *[S.100]*

CHAPTER-XII: Assessment

Rule 98

Provisional assessment [S.60]

Rule 99

Scrutiny of returns [S. 61]

Rule 100

Assessment in certain cases [S. 62-63-64]



SELF-ASSESSMENT

S.59



S.59: Self-assessment

- **Every registered person shall-**
 - **self assess** the taxes payable, and
 - **furnish a return** for each tax period [S.39]



S.59: Self-assessment

Analysis of S.59

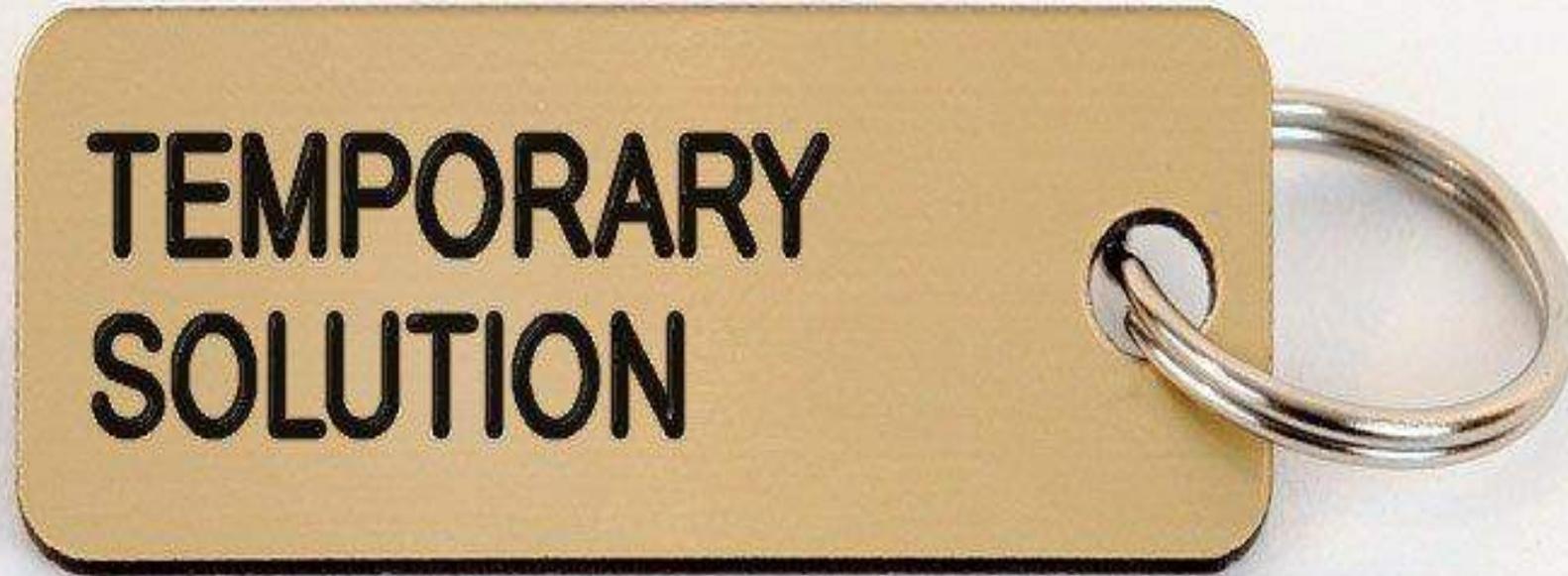
- **Self-assessment** takes place on furnishing of returns by the taxpayer.
- **S. 2(11)-"assessment"** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.
- There are **no re-assessment provisions** under the GST Law.
- **S.39(9)** allows the taxpayer to **rectify** mistakes in returns.



S.59: Self-assessment

Analysis of S.59

- **The law allows rectification of Form GSTR-3B.**
- **Self assessment does not imply un-supervised self administration, e.g., in case there is some refund due to any mistake, the same cannot be adjusted in the GSTR-3B.**



PROVISIONAL ASSESSMENT
S.60



S.60: Provisional assessment

S.60(1): Cases where provisional assessment is made

- Where a taxable person is unable to determine -
 - (a) **value** of supply, or
 - (b) **rate** of tax,
- request proper officer to pay tax on **provisional basis**
- by filing an **application** in FORM GST ASMT-01



S.60: Provisional assessment

S.60(1): Cases where provisional assessment is made

- Proper officer may issue **notice** in FORM GST ASMT-02 to furnish information
- Applicant to **reply** in FORM GST ASMT-03



S.60: Provisional assessment

S.60(1): Cases where provisional assessment is made

- Proper officer shall pass **order within 90 days** in **FORM GST ASMT-04**
 - (a) rejecting the application with reasons, or
 - (b) allowing provisional payment of tax



S.60: Provisional assessment

S.60(2): Execution of bond and payment of security

Payment of tax on provisional basis shall be allowed after-

- (a) execution of **bond** in FORM GST ASMT-05, and**
- (b) furnishing of security not exceeding 25% of the **amount** covered in the bond, in the form of bank guarantee**

Amount: Includes IGST, CGST, SGST, UTGST and Cess payable



S.60: Provisional assessment

S.60(3): Final assessment order

- Final assessment order shall be passed in **FORM ASMT-07**
 - **within 6 months** (extendable up to 4 years)
- **Notice** may be issued before passing order in **FORM GST ASMT-06**, calling for information and records.



S.60: Provisional assessment

S.60(4): Payment of interest

- **Shall pay interest on short payment, not exceeding 18% [S.50(1)]**



CHAPTER-XII: Assessment

45

S.60: Provisional assessment

S.60(5): Interest on refund

- **Shall be paid interest 9% [S.56]**



S.60: Provisional assessment

Analysis of S.60

- It is **not the substitute of advance ruling**
- **Valuation and rates** issues can be part of S.60
- **Section does not apply in the case of other issues like: PoS, ToS, Goods or Services dispute, Mixed Supply or Composite Supply, admissibility of ITC, whether it is a supply or not etc.**



S.60: Provisional assessment

Analysis of S.60

- **The PO cannot reject ASMT-01 application unless the assessee failed to furnish the required documents**
- **Alert: If the PO passes final orders in 4 years, taxpayer will be liable to pay 18% interest?**



SCRUTINY OF RETURNS

S.61



S. 61: Scrutiny of returns

S. 61(1): Selection of cases for scrutiny

- Proper officer may **scrutinize the return**
- **Discrepancies in FORM GST ASMT-10**
 - May be quantifying the **tax, interest,**
 - Giving **30 days** time
- Reply in FORM **GST ASMT-11**
- Final order in FORM **GST ASMT-12**



S. 61: Scrutiny of returns

S. 61(3): PO may proceed action u/s. 65, 66, 67, 73 or 74, in case

- **The explanation given by the taxpayer is not satisfactory**
- **Reply not received within 30 days, or**
- **Person fails to take corrective measures in returns**



S. 61: Scrutiny of returns

S. 61(3): AO

- **Initiate action** including-
 - **Conduct of audit u/s. 65 or special audit u/s. 66**
 - **Inspection, search or seizure and arrest u/s. 67**
 - **Proceed to determine tax u/s. 73 or 74**



S. 61: Scrutiny of returns

Analysis of S.61

- It is a **pre-adjudication process**.
- For scrutiny, PO must notice some **discrepancy** in the return of the taxpayer.



S. 61: Scrutiny of returns

Analysis of S.61

- The **powers** exercisable under this section are limited.
- Only **jurisdictional PO** can take the action.
- **Alert:**

No assessment can be completed under this section up to DRC-07.

DEFAULTER

A hand in a dark suit sleeve points towards the 'TAX RETURN' stamp.

**TAX
RETURN**

**ASSESSMENT OF NON-FILERS OF
RETURNS**

S.62



S. 62: Assessment of non-filers of returns

S. 62(1): Best judgment assessment

- **If registered person fails to furnish return under-**
 - **S.39 (monthly return) or**
 - **S.45 (final return),**
- even after service of notice u/s. 46**



S. 62: Assessment of non-filers of returns

S. 62(1): Best judgment assessment

- Proper officer to pass **best-judgment assessment** order in **FORM GST ASMT-13 + DRC-07**
- Within **5 years** from the due date of filing annual return (GSTR-9)



S. 62: Assessment of non-filers of returns

S. 62(2): Withdrawal of Best judgment assessment

- If return furnished **within 30 days** of service of order, the assessment order shall be withdrawn.
- **Liability to pay interest** u/s. 50(1) or payment of late fee u/s. S. 47 shall continue.



S. 62: Assessment of non-filers of returns

Analysis of S. 62

- **Net liability should be assessed: After giving credit of ITC.**
- **Returns filed after 30 days, order cannot be withdrawn.**
- **Notice u/s. 46 is needed before passing orders u/s. 62.**



ASSESSMENT



**ASSESSMENT OF
UNREGISTERED PERSON
S.63**



S. 63: Assessment of unregistered persons

- **Taxable person-**
 - who **fails to obtain registration**, or
 - whose registration has been **cancelled by PO under S. 29(2)**, but **liable** to pay tax,
- **PO can issue Form GST ASMT-14 + DRC-01** containing grounds on which best judgment of his tax liability can be made in **Form ASMT-15 + DRC-07**

A hand holding a sign that says "SUMMARY". The sign is made of white, textured letters on a dark background. The hand is holding the sign from the right side, with the thumb and index finger visible. The background is dark and slightly blurred.

SUMMARY

SUMMARY ASSESSMENT

S.64



S. 64: Summary Assessment in certain special cases

S. 64(1): Summary Assessment

- **These are protective assessments**
- **The PO may, (prior permission of Addl. Com/ Jt. Com)**
- **On any evidence** showing a tax liability
- **Proceed to assess tax liability and**
- **Issue order** in FORM GST ASMT-16 plus DRC-07



S. 64: Summary Assessment in certain special cases

S. 64(1): Summary Assessment

- Such orders are appealable under **S. 107**
- Such assessments are made on an urgent basis where PO suspects **loss of revenue** due to insolvency, instances of defaulting, absconding etc.



S. 64: Summary Assessment in certain special cases

Proviso to S.64(1): Summary Assessment

- Where the taxable person is not ascertainable and such liability pertains to supply of goods.
- The **person in charge** shall be deemed to be taxable person liable to be assessed and pay tax.



S. 64: Summary Assessment in certain special cases

S. 64(2): Withdrawal of summary assessment

- Application in **FORM GST ASMT-17** within **30 days** for withdrawal of the summary assessment order.
- If the Addl. Com/ Jt. Com considers that such **order is erroneous**, he may withdraw order by issue of **FORM GST ASMT-18**.
- After withdrawal, proceedings u/s. **73/ 74** can be initiated.

Thanking You

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