

## AUDIT AND ASSESSMENT IN THE GST REGIME

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While the GST regime emphasizes self-assessment processes, the complexities involved in it make one wary. At this juncture, it is clear that the GST law is not presently simple enough for an assessee to compute his total and taxable turnovers and duly report the same. In order to ensure effective compliance with the various GST provisions and to ensure performance of audits in a systematic, transparent and fair manner, audit provisions have been incorporated under the GST Acts(s)/Rules.

“Audit” means the examination of records, returns and other documents maintained or furnished by the registered person to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made there under. (Section 2(13) of the CGST/SGST Act )

The Department may initiate two types of Audit(s) under GST -

1. Audit which is done by a chartered Accountant or a Cost Accountant
2. Audit which is done by the commissioner or any officer authorised [ Section 65 and 66 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Section 2 of UTGST Act, 2017]
3. Special Audit [Section 66 of CGST Act, 2017 read with Rule 102 of CGST Rules, 2017]

### 1. Audit by a Chartered Accountant or a Cost Accountant

#### [ Section 35(5) of the CGST Act/ SGST Act read with Rule 80(3) of the CGST/SGST Rules, 2017]

Every registered person whose **turnover** during a financial year exceeds the prescribed limit of **Rs. 2 Crore** shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

*Note that in Section 35(5) the term “turnover” shall mean “aggregate turnover”.*

*The term “aggregate turnover” has been defined as under vide Section 2(6) of the CGST Act/SGST Act:*

“Aggregate Turnover” means the aggregate value of all taxable supplies (**excluding** the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same **Permanent Account Number**, to be computed on all India basis but **excludes** central tax, State tax, Union territory tax, integrated tax and cess. While computing the value of “Aggregate Turnover”, following **inclusions** shall be made:

- (1) Value of all **Taxable Supplies**. The term “Taxable Supply” means a supply of goods or services or both which is leviable to tax under the GST Acts.
- (2) Value of all **Exempt Supplies**. The term “Exempt Supply” means supply of any goods or services or both which attracts **nil rate of tax** or which may be **wholly exempt** from tax under Section 11 of the CGST Act/SGST Act or under section 6 of the Integrated Goods and Services Tax Act, **Examples** of “Exempt Supply” are - Live bovine animals, Live swine, Live Fish, Melons, Services by a Foreign Diplomatic Mission located in India, Services by way of admission to a Museum, National Park, Wildlife Sanctuary.

It is also worth highlighting here that the term “exempt supply” includes **non-taxable supply** also. The term “**Non-taxable Supply**” means a supply of goods or services or both which is not leviable to tax under the CGST Act/SGST Act or under the IGST Act. **Examples** of non-taxable supply are Alcoholic Liquor for Human Consumption and five specified Petroleum Products i.e. Petroleum Crude, Motor Spirit (Petrol), High Speed Diesel [HSD], Natural Gas and Aviation Turbine Fuel [ATF]

- (3) Value of **Export of Goods or Services** or both; and
- (4) Supplies to branches in other States having same Permanent Account Number [PAN]

However, following **Exclusions** shall be made while computing the Value of Aggregate Turnover:

- (i) Value of Inward supplies on which tax is payable by a person on Reverse Charge basis. **Examples** of supplies subject to Reverse Charge are- Services provided by way of Sponsorship to any Body Corporate or Partnership Firm, Services supplied by a Director of a Company or Body Corporate to the said company or Body Corporate.
- (ii) Central Tax, State Tax, Union territory Tax, Integrated Tax and Cess

### Statements and Documents to be submitted to the Proper Officer

It shall be necessary for the registered person to submit to the proper officer the following Statements and Documents:

- (a) A copy of the Audited Annual Accounts;
  - (b) Reconciliation Statement under **Section 44(2)** of the CGST Act/SGST Act i.e. a Statement reconciling the value of supplies declared in the Return furnished for the financial year with the audited Annual Financial Statements. Further, the aforesaid Reconciliation Statement shall be duly certified in **FORM GSTR-9C**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
  - (c) Other prescribed documents in the prescribed form and prescribed manner.
- It is also to be borne in mind that the Government is yet to prescribe the format of the Audit Report and Annexures thereto. Further, it is also not yet clear, whether auditor is required to identify and report the discrepancies month-wise or annually.

### Appointment of GST Auditor

In case of a **company** the appointment of the GST auditor shall be made by a resolution of the Board of Directors or by an officer of the company, if so authorized by the Board in this behalf. In case of a **partnership firm or proprietary concern**, the appointment can be made by a partner or the proprietor or a person authorized by the assessee. The acceptance of appointment by the proposed GST Auditor shall also be communicated in writing to the assessee.

### General Checklist for a Chartered Accountant before Accepting the Appointment as an GST Auditor

1. Any **member in part-time practice** is not entitled to perform attest function. Only partners can perform attestation function.
2. In case of **Joint Audits**, all the auditors will have to sign the audit report. If the auditors have different opinion, then they should issue separate audit reports.
3. A chartered accountant having **substantial interest** in the assessee's business cannot take up the audit.
4. A chartered accountant who is **responsible for writing or the maintenance of books of account** of an assessee is not eligible for being appointed an auditor of the same assessee.
5. **Internal auditor** of an assessee cannot be appointed as his tax auditor.
6. A chartered accountant is not eligible to accept the GST Audit of a person to whom he is indebted for more than Rs. 10,000/-.
7. The restrictions applicable for appointment of statutory auditor where fee for other services are more than the statutory audit fee, in case of specified entities, is not applicable to GST auditors.
8. A chartered accountant cannot charge professional fees based on a percentage of profit or which are contingent upon the finding or the result of the professional employment.
9. In many cases, an assessee may be having his GST registrations in many States. The assessee may appoint single auditor for all his registered establishments. Accounts and records might have been kept in the local language of the State. It is suggested that in the normal course, the auditor should not accept the audit of accounts written in a language which he/his staff does not understand.

Furthermore, every auditor [including a GST Auditor] should keep in mind the following observations of **Lord Justice Lopes** in respect of an auditor's duty of care, in the landmark case of **Kingston Cotton Mills Co. (1896)**:

*"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably careful, cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said to approach his work with suspicion, or with a forgone conclusion that there is something wrong. **He is a watchdog, not a bloodhound.** He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest and rely upon their representations, provided he takes reasonable care."*

### Removal of GST Auditor

Any resolution to remove a statutory auditor shall not be effective unless there are **good and substantial grounds** for the removal related to the conduct of the auditor with regard to the performance of his or her duties as auditor. However, the auditor cannot be removed on the ground that he has given an adverse or qualified Audit Report. In the event an auditor has been removed without any valid grounds, the Ethical

Standards Board of ICAI or ICWAI, as the case may be, can intervene and it may direct the incoming auditor not to accept the audit assignment.

### **Audit by the Tax Authorities (Section 65 of CGST/SGST Act)**

In order to ensure whether the tax liability has been correctly computed and discharged by the registered person, it becomes essential for the Department to conduct an audit of Records maintained by the person. The Commissioner or an officer authorised by him, may undertake audit of any registered person by issuing a general order or a special order. **General Order** shall specify the criteria and all the registered persons fulfilling that criteria shall get covered in the ambit of audit. On the other hand, **Special Order** for audit shall be issued in the name of a particular registered person and only such person shall be made subject to audit. Further, the authorised officer may conduct Audit **either at the place of business of the registered person or in his own office.**

It is worth emphasizing here that the authorized officer, **during the course of audit**, may require the registered person to:

- (i) Afford him necessary facility to verify the books of account or other documents required by him;
- (ii) Furnish such information as may be required by him for the conduct of audit, and to provide assistance for timely completion of audit.

It is also pertinent to add here that audit of a registered person shall be **completed within three months** from the date of commencement of audit. The expression '**commencement**' shall mean the date on which the books of account, records and other documents, asked for by the tax authorities, are made available by the registered person or the date of actual institution of audit at the place of business, whichever is later. However, if the Commissioner is satisfied that audit of the registered person cannot be completed within three months, he may **extend the time period for a further period not exceeding six months** after recording the reasons for doing so in writing.

### **Manner of Conducting Departmental Audit – Rule 101 of the CGST/SGST Rules, 2017**

Audit of a registered person shall be conducted for a **period of a financial year or multiples thereof.** Thus, Audit cannot be conducted for a part of the Financial Year in normal circumstances. Period to be covered under the Audit can be a single financial year or two financial years or three and so on.

The registered person shall also be informed by way of notice in **FORM GST ADT-01** at least 15 days prior to the conduct of audit. Moreover, the proper officer who has been authorised to conduct the audit of the records and books of account of the registered person shall, with the assistance of his team of officers and officials, **verify the documents** on the basis of which the books of account are maintained, the returns and statements furnished by the registered person, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and **record the observations** in his audit notes.

Furthermore, the proper officer may inform the registered person of the **discrepancies**, if any, noticed. The registered person may file his explanation to discrepancies in his reply. Thereafter, the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

Finally, **on conclusion of audit**, the proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings in **FORM GST ADT-02.**

### **3. Special Audit (Section 66 of the CGST/SGST Act)**

If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, **any officer not below the rank of Assistant Commissioner**, having regard to the nature and complexity of the case and the interest of revenue, is of the **opinion that the value has not been correctly declared or the credit availed is not within the normal limits**, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be **nominated by the Commissioner.**

The Chartered Accountant or Cost Accountant nominated by the Commissioner shall, within a **period of 90 days** from the date of his nomination, **furnish the Audit Report** to the Assistant Commissioner on whose direction audit is conducted. However, the aforesaid period of 90 days may be **extended** by the Assistant Commissioner on his own motion, or on an application made by the registered person or the Chartered Accountant or Cost Accountant nominated by the Commissioner, for material and sufficient reason.

It is also worth highlighting here that even if the accounts and records of the registered person are audited under any other provisions of the CGST Act/SGST Act or any other law in force [such as Companies Act,

2013 or Income Tax Act, 1961], the said registered person shall be required to get his records audited by a Special Auditor. Thus, provisions of Special Audit have an **Overriding Effect** on other Audit provisions of the CGST Act/SGST Act or of any other Act.

The Registered Person shall be **given an opportunity of being heard** where any material gathered on the basis of Special Audit under the CGST Act/SGST Act is proposed to be used against him in any proceedings under the Act as per the **Principle of Natural Justice**.

The **expenses of examination and audit** of records of the Registered Person by the Special Auditor [including the remuneration of the Special Auditor] shall be **determined and paid by the Commissioner**. And aforesaid determination of expenses shall be final which means that no appeal can be filed to any Authority against such determination.

It is also essential to note that if Special Audit of the records and documents of the Registered Person results in detection of tax not paid or short paid or tax erroneously refunded, or input tax credit wrongly availed or utilized by him, the proper officer may proceed to initiate action under Section 73 or Section 74 of the CGST Act/SGST Act. The Headings of foregoing Section 73 or Section 74 are given in the Table hereinbefore.

### **Procedure of ordering special Audit and submission of special audit report - Rule 102 of the CGST/SGST Rules, 2017:**

Where special audit is required to be conducted under section 66 of CGST and SGST Act, the officer referred to in the said section shall issue a direction in **form GST ADT-03** to the registered person to get his records audited by the chartered accountant or cost accountant specified in the said direction - Rule 102(1) of CGST and SGST Rules, 2017.

On conclusion of special audit, the registered person shall be informed of the findings of special audit in **form GST ADT-04**.

### **Assessment under GST Law**

Tax assessment and Tax audit are the provisions regularly deployed to ensure the compliances by the assessee under any tax law. "Assessment" is the process of determination of the tax liability of the taxpayer. GST Assessment is required to be done to establish the tax liability of an assessee. Taxation laws lay down a process of assessment, i.e. a way to figure out how much tax is to be paid.

"Assessment means determination of tax liability under Central Goods and Service Tax Act, 2017 and includes:

1. Self Assessment
2. Assessment by Department by way of:
  - a. Scrutiny of returns of persons who filed the returns
  - b. Assessment of Non-filers of returns
  - c. Assessment of unregistered persons
3. Provisional Assessment
4. Summary Assessment

Section 59 to 64 of Chapter XII under the Central Goods & Service Tax Act 2017 deals with the provisions related to Assessment.

### **Self Assessment (Sec. 59)**

Self assessment is available to every registered taxable person to assess the tax payable by him for any period. Every registered person shall self-assess the taxes payable by him and furnish a return for each tax period as specified under section 39 i.e. GSTR-3. In this the tax to be paid by the person is self assessed by him.

*"tax period" means the period for which the return is required to be furnished.*

### **Assessment by Scrutiny of returns of persons who filed the returns (Sec. 61)**

The proper officer may scrutinize the returns furnished by the registered person so as to verify its correctness. If he comes across any discrepancies in the returns, he shall issue a notice seeking explanation. Now, there can be two cases:

- If the explanation is found to be acceptable, then no further action is taken and the person is informed accordingly.

- If the explanation is not satisfactory or where 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.

**Assessment of Non- filers of returns (Sec. 62)**

Where a registered person fails to furnish the return under section 39 (i.e. GSTR-3), then the department issues notice requiring the person to furnish his return. If even after the service of notice by the department, the person does not furnish his return, then the officer shall assess the tax liability of that person to the best of his judgement by taking into account all the relevant material which is available or which he has gathered. The officer shall issue an assessment order in this regard within a period of 5 years starting from 31<sup>st</sup> day of December following the end of such financial year for which the tax not paid relates.

Example: Harish Ltd. is registered under GST. He has neither filed his GSTR return nor paid the tax for the month of February 2018. In this case, the officer can issue him an assessment order only after 31<sup>st</sup> December 2018 but before 31<sup>st</sup> December 2023.

**Assessment of unregistered persons (Sec. 63)**

Where a taxable person fails to obtain registration even though liable to do so, the officer shall assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods. The officer shall issue an assessment order in this regard within a period of 5 years starting from 31<sup>st</sup> day of December following the end of such financial year for which the tax not paid relates. Note that no such assessment order shall be passed without giving the person an opportunity of being heard.

**Provisional Assessment (Sec. 60)**

When the taxable person is unable to determine:

- the value of goods or services or both or
- the rate of tax applicable thereto,

he may pay the tax on a provisional basis and intimate about the reason for paying the tax provisionally to the officer. The officer shall, then pass an order, within a period of 90 days from the date of receipt of such intimation, allowing the person to pay the tax on provisional basis at such rate or on such value as may be specified by him.

Note that the payment of tax on provisional basis may be allowed, if the taxable person executes a bond with surety or security as the proper officer may deem fit. This bond with surety or security shall bind the taxable person for payment of the difference amount of tax as may be finally assessed and the amount of tax provisionally assessed.

The officer shall, within a period of 6 months from the date of the communication of the order, pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

**Summary Assessment (Sec. 64)**

In order to protect the interest of revenue, if the officer come across any evidence which shows a tax liability of a person, then he may with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue.

However, if the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, then the person in charge of such goods shall be deemed to be the taxable person and he shall be liable to pay tax and any other amount due thereon.