



ASSESSMENT AND AUDIT UNDER GST LAW

CMA SHIBA PRASAD PADHI

Practicing Cost Accountant, Bhubaneswar

Goods and Services Tax (GST) is a self-assessed tax and around 95 lakh taxpayers who have registered are required to file tax returns. Even though the GST Council has extended applicability of certain important provisions till 31.03.2018 and extended the due date of filing of all types of returns for the initial months, still a tax payer should essentially understand the provisions of assessment and audit under GST Law.

Section 59 to Section 64 under Chapter XII and Section 65 and Section 66 under Chapter XIII of The CGST Act, 2017 deals with the provisions relating to assessment and audit respectively.

| Coverage | Chapter | Section | Provision |
|------------|---------|---------|-------------------------------------|
| Assessment | XII | 59 | Self Assessment |
| | | 60 | Provisional Assessment |
| | | 61 | Scrutiny of Returns |
| | | 62 | Assessment of Non-Filers of Returns |
| | | 63 | Assessment of unregistered persons |
| | | 64 | Summary Assessment in certain cases |
| Audit | XIII | 65 | Audit by Tax Authorities |
| | | 66 | Special Audit |

Section 98 to Section 100 under Chapter XII of the CGST Rules, 2017 deals with the provisions relating to assessment. Section 101 and Section 102 under Chapter XII of the CGST Rules, 2017 deals with the provisions relating to audit.

| Coverage | Chapter | Section | Provision |
|------------|---------|---------|-----------------------------|
| Assessment | XI | 98 | Provisional Assessment |
| | | 99 | Scrutiny of Returns |
| | | 100 | Assessment in certain cases |
| Audit | | 101 | Audit |
| | | 102 | Special Audit |

The CGST Rules, 2017 has prescribed 18 Forms relating to Assessment and 4 Forms relating to Audit which are to be electronically filed on the common portal. They are as under:

| Sl. No. | Form No. | Provisional Assessment, Rule-98 |
|---------|----------|---|
| 1 | ASMT-01 | Payment of tax on a provisional basis |
| 2 | ASMT-02 | Notice by Proper Officer seeking additional information to make provisional assessment |
| 3 | ASMT-03 | Reply to Notice by Applicant |
| 4 | ASMT-04 | Order of Provisional Assessment |
| 5 | ASMT-05 | Furnishing Security |
| 6 | ASMT-06 | Issue of Notice by Proper Officer seeking information and records required for finalisation of assessment |
| 7 | ASMT-07 | Final Assessment Order by Proper Officer |
| 8 | ASMT-08 | Application by Registered Person for release of Security |
| 9 | ASMT-09 | Order by Proper Officer for release of Security or rejecting the Application |

| Sl. No. | Form No. | Scrutiny of Returns, Rule-99 |
|---------|----------|--|
| 1 | ASMT-10 | Notice for intimating discrepancies in the Return after Scrutiny |
| 2 | ASMT-11 | Reply to the Notice issued |
| 3 | ASMT-12 | Order of acceptance of reply against the Notice issued |

| Sl. No. | Form No. | Assessment in certain cases, Rule-100 |
|---------|----------|--|
| 1 | ASMT-13 | Order of Assessment u/s 62 |
| 2 | ASMT-14 | Show Cause Notice for assessment |
| 3 | ASMT-15 | Order of Assessment u/s 63 |
| 4 | ASMT-16 | Order of Assessment u/s 64 |
| 5 | ASMT-17 | Application by Registered Person for withdrawal of Assessment Order u/s 64 |
| 6 | ASMT-18 | Acceptance or Rejection of Application filed u/s 64 (2) |

| Sl. No. | Form No. | Audit, Rule-101 |
|---------|----------|---|
| 1 | ADT-01 | Notice by Proper Officer to conduct Audit |
| 2 | ADT-02 | Audit Report u/s 65 (6) |

| Sl. No. | Form No. | Special Audit, Rule-102 |
|---------|----------|---|
| 1 | ADT-03 | Direction to RP to get his records audited by CA/CMA u/s 66 |
| 2 | ADT-04 | Informing findings of Special Audit to Registered Person |

Provisional Assessment

Though GST is a self-assessed tax a taxpayer may also pay tax on provisional basis by making written requests and giving reasons for the same to the Commissioner, when he is unable to determine his tax liability, in the following two situations:

- a. He is unable to determine the value of his supply, or
- b. He is unable to determine the applicable tax rate for goods or services he is supplying.

The Commissioner or any officer designated by him as a Proper Officer (PO), in such case, pass an order within ninety days from the date of application allowing the taxpayer to pay tax on provisional basis and specify the value and rate to be considered while paying tax. However, the taxpayer has to execute a bond and has to provide a surety or security in form of a Bank Guarantee (upto 25% of the amount covered under the bond) as the Commissioner /PO decides. The Commissioner/PO shall make a final assessment and pass an order within six months from the date of communication of provisional assessment order. If any excess tax arise on final assessment, then that is to be paid by the taxpayer. The period of six months to issue final assessment order can be extended upto another six months by Joint Commissioner / Addl. Commissioner and Commissioner

can extend the period upto four years. The tax payer has to pay interest if tax is not paid on the basis of provisional assessment made. However, if the tax payer is entitled for refund after final assessment is made, he will get interest on such refund amount.

Scrutiny of Returns

Various Returns which a taxpayer files may be scrutinised by the Proper Officer and discrepancies found if any are to be intimated by him to the taxpayer. The Proper Officer can also seek explanations from a taxpayer in case he notice discrepancies and such explanations if found unsatisfactory or un-responded till 30 days, then he may initiate audit process or even can initiate inspection or a search and seizure action. May be robot audit will be of great help to a Proper Officer as lot of data mining and data analysis can be done using the digital platform. Even returns filed without providing required and/or correct data can trigger and made the job of scrutiny simpler and faster.

Non-filing of Tax Returns

Despite repeated extension of dates, around 65% of the taxpayers have filed GSTR-3B for the first three months as evident from the Notifications issued by the Government and available in public domain. A summary

of number of filings of GSTR-3B and tax collection during the first three months are as under:

| Month | No. of Returns Filed | No of Taxpayers reqd to file | % | Tax Collected | Notification Date | CGST | SGST | IGST | Cess | Import-IGST | | | | |
|---------|----------------------|------------------------------|----|---------------|-------------------|--------|--------|--------|-------|-------------|--------|--------|-------|--------|
| July | 38.38 | 59.70 | 64 | 92,283 | 29.08.2017 | 14,894 | 22,722 | 47,469 | 7,198 | 20,964 | | | | |
| August | 37.63 | 68.20 | 55 | 90,669 | 26.09.2017 | 14,402 | 21,067 | 47,377 | 7,823 | 23,180 | | | | |
| Sept | 42.91 | 69.00 | 62 | 92,150 | 23.10.2017 | 14,042 | 21,172 | 48,948 | 7,988 | 23,951 | | | | |
| Average | | | | 91,701 | | | | | | 14,446 | 21,654 | 47,931 | 7,670 | 22,698 |
| | | | | % | | | | | | 16 | 24 | 52 | 8 | 25 |

The Non-filers have the following two alternatives:

- file the pending returns by paying the unpaid tax, late fee and interest as applicable which accumulate with each passing day, or
- face the consequence of payment of tax based on best-judgement assessment on the basis of evidence / information gathered by the Proper Officer which he can initiate any time within the next five years from the date of filing of annual returns for a particular financial year which is 31st December.

Of course, non-filing of returns may also lead to cancellation of registration. A registered person is required to file tax returns even if it is a NIL Return.

Audit by Tax Authorities

The Commissioner may himself or authorise any of his Officer to issue a general or specific order to undertake audit of any registered person. Such audit can either be carried out at the premises of the registered person or at office of such tax authority. The registered person is to be informed at least fifteen days before such audit starts and such audit has to be completed within three months from the date of submission of all required documents, books of accounts, information to the tax authorities by the taxpayer. However, if such audit cannot be completed within three months, then the Commissioner can extend the period of audit by six months further. Tax authorities will have to intimate about their findings with reasons, duties and obligations of the auditee within thirty days of completion of their audit.

The tax authorities can send a Demand-cum-Show Cause Notice in the following cases to a registered person and give an opportunity to the taxpayer to explain why the taxpayer will not pay the amount demanded along with interest and penalty.

- the taxpayer has not paid proper amount of tax what he should have paid otherwise;
- the taxpayer has paid less amount of tax what he should have paid otherwise;
- refund of tax made wrongly to the taxpayer;
- input tax credit wrongly availed or utilized;

Special Audit

A tax officer in the rank of Assistant Commissioner or above can direct a registered person to conduct a special audit, in the following cases, by engaging a Chartered Accountant or Cost Accountant who is nominated and paid by the Commissioner.

- the taxpayer has not declared the taxable value correctly;
- credit availed by the taxpayer is beyond the normal limits;
- if the tax authorities feel that such audit is in the interest of the revenue.

The Chartered Accountant or Cost Accountant so engaged to conduct a special audit has to submit his audit report within ninety days which can be further extended by another ninety days. Before initiating any proceedings on the findings of the Special Auditor, the taxpayer will be given an opportunity of being heard.

Even if tax authorities undertake a departmental audit or audit under any other law is undertaken, special audit can be conducted if the tax authorities feel the requirement.