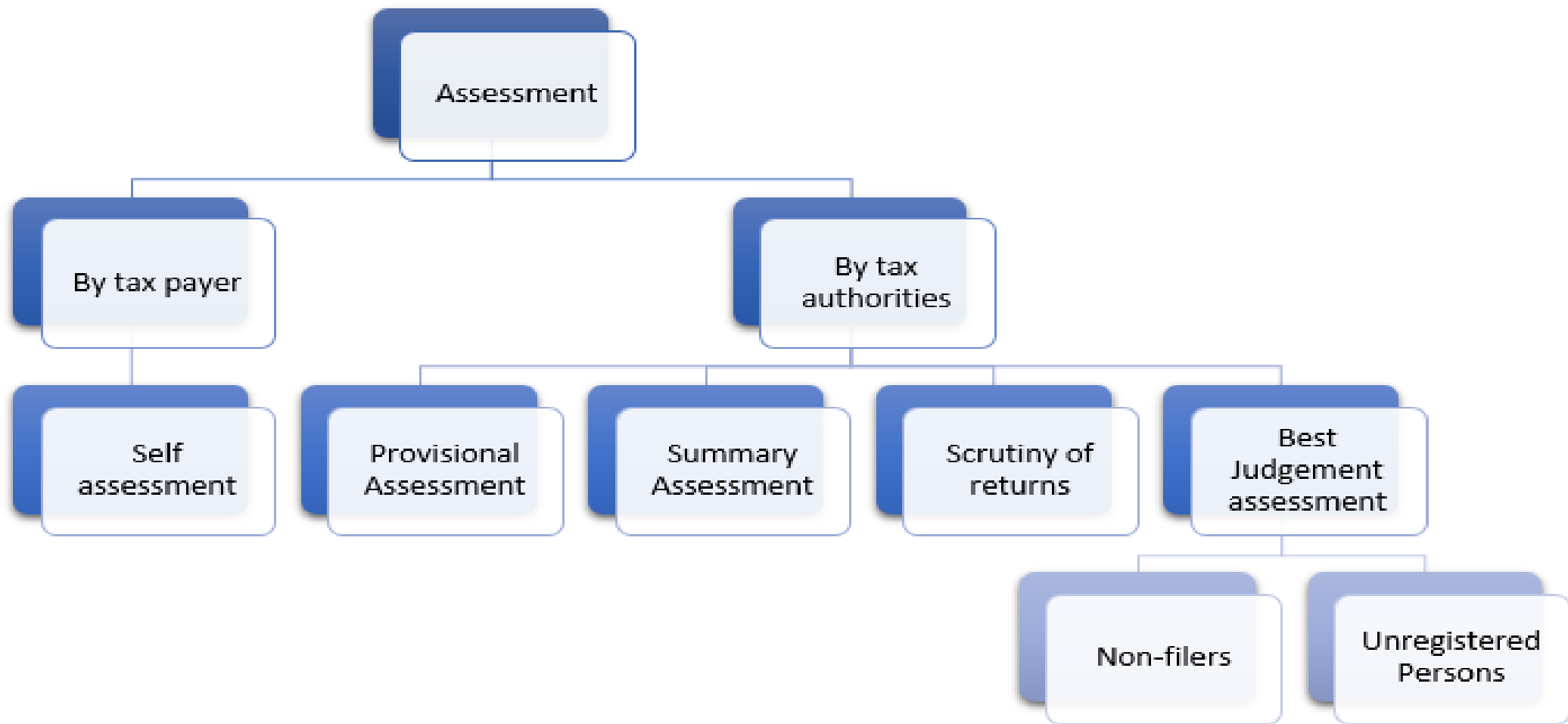


Litigations under GST Laws and How to Handle it

Assessment and Department Audit

By
CMA Niranjan Swain
Bcom, LLB, CS, FCMA
Advocate & Tax Consultant





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- Section 2(11) of CGST “assessment” means
 - ❖ determination of tax liability under this Act and
 - ❖ includes self-assessment,
 - ❖ re-assessment,
 - ❖ provisional assessment,
 - ❖ summary assessment and
 - ❖ best judgment assessment;

□ Self Assessment:

Sec 59 of CGST Act: –

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.

Different ways to assess the tax liability by a registered person

A registered person may assess his tax liability in two different ways depending upon the circumstances warranting such an assessment.

Provisional Assessment

Where the taxable person is unable to determine value; or rate of tax applicable to the goods or services or both to be supplied by him

Self-Assessment

In all other cases

For this –

- Taxable person shall furnish an application along with the documents in support of his request.
- The proper officer after calling for additional information and documents, if required, issue an order indicating therein-
 - value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis;
 - amount for which the bond is to be executed and security to be furnished

Provisional Assessment

Provisional Assessment: –

We can define provisional Assessment is a conditional Assessment, when assessee unable to find actual Value, Rate and liability then he approach to Assessing officer with written application and AO pass an order on provisional and conditional basis, assessee deposit tax liability as specified in order on provisional basis.

Sec 60 of CGST Act: –

(1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer 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.

Provisional Assessment

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment: Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

(5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of **section 54**, interest shall be paid on such refund as provided in section 56.

Provisional Assessment

Department Procedure for GST Audit

Departmental Procedure for GST Assessment

- **GST ASMT-01:** – Every registered person requesting for payment of tax on provisional basis with document support by electronically in FORM GST ASMT-01.
- **GST ASMT-02:** – Proper officer issue a notice in FORM GST ASMT-02 for furnish the additional information or document in support and may appear in person if he so desires.
- **GST ASMT-03:** – Applicant shall file a reply to notice in FORM GST ASMT-03 with proper information and supporting documents.
- **GST ASMT-04:** – Proper officer issue an order in FORM GST ASMT-04 after allowing the payment of tax on a provisional basis and indicating value, rate or both also amount of security mention in order which the bond is to be executed.
- **GST ASMT-05:** – When order will be passed then assessee shall furnish a bond in the FORM GST ASMT-05 in form of bank guarantee with amount mention in order.
- **GST ASMT-06 & GST ASMT-07:** – If Proper officer need any more details for finalization of Assessment then he shall issue a notice in FORM GST ASMT-06 for calling information and record, after getting all required information and records, proper officer issue a final assessment order by specifying amount in FORM GST ASMT-07, if any amount payable by assessee, then he must pay with interest and if any amount refundable then amount refunded with interest rate specified under this Act & Rules.
- **GST ASMT-08 & GST ASMT-09:** – When final assessment order issued then assessee may file application in form ASMT-08 for release the security furnished and the proper officer after ensuring that any balance tax has been deposited shall release same and pass an order in FORM GST ASMT-09 within seven days from receipt of application.

Provisional Assessment

Department Procedure for GST Audit

Type of Form	Purpose	User	Rules
ASMT-01	Application for requesting provisional assessment	Registered Person	Rule 98(1)
ASMT-02	Issue notice for furnish the additional information or document in support	Proper officer	Rule 98(2)
ASMT-03	Reply to notice with proper information and supporting documents.	Registered person	Rule 98(2)
ASMT-04	Issue a provisional order and indicating value, rate or both also amount of security mention in order which the bond is to be executed.	Proper officer	Rule 98(3)
ASMT-05	Furnish a bond in the form of bank guarantee with amount mention in order.	Registered person	Rule 98(4)
ASMT-06	For need any more details for finalization of Assessment then calling information and record.	Proper officer	Rule 98(5)
ASMT-07	Issue final Assessment order by specifying amount payable or refundable.	Proper officer	Rule 98(5)
ASMT-08	Application for release the security furnished.	Registered person	Rule 98(6)
ASMT-09	Order for release security with any adjustment within seven days from receipt of application.	Proper officer	Rule 98(7)

Scrutiny Assessment: –

Scrutiny means a crosscheck and verification, for ensuring the correctness of return submitted by registered person, in the process of scrutiny if any discrepancies found in return, then proper officer-initiated scrutiny process and crosscheck and verify that registered person has follow the process define under this act or not also ensure that assessee submitted correct information in proper manner or not.

In scrutiny process, proper officer served a notice to submit correct particulars and rectify discrepancy, if satisfactory reply and corrective action is not taken by registered person in specified time period then appropriate action may taken by assessing officer.

Scrutiny of Return – Section 61

Verifying the correctness of return

The return furnished by a registered person may be selected for scrutiny by proper officer to verify its correctness. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same with reference to the information available with him.

Issue of notice

In case any discrepancy is found during scrutiny of return, proper officer shall issue a notice to the said person informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding 30 days from the date of service of the notice, or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

Scrutiny of Return – Section 61

Reply to notice

The registered person to whom notice is issued within a period of 30 days from the date of service of the notice or such further period as may be permitted by the proper officer may–

- accept the discrepancy as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same; or
- furnish an explanation for the discrepancy to the proper officer regarding non-acceptance of discrepancy.

Scrutiny of Return – Section 61

Action by Proper Officer

Where the explanation furnished by the registered person or the information submitted is found to be acceptable, the proper officer shall inform him accordingly and no further action shall be taken in this regard.

In case no satisfactory explanation is furnished by registered person or where the registered 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 take recourse to any of the following provisions, namely:

- (a) proceed to conduct audit under section 65 of the Act;
- (b) direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or
- (c) undertake procedures of inspection, search and seizure under section 67 of the Act; or
- (d) initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

Departmental Procedure for GST Assessment

- **GST ASMT-10:** – In the scrutiny process proper officer has satisfactory with records then drop the process, and if not satisfy and found any discrepancy then serve a notice in FORM GST ASMT-10 to get information and explanation within 30 days or further period as may be permitted for such discrepancy, and whereas possible proper officer also quantifying tax interest and any other sum payable.
- **GST ASMT-11:** – Registered person after receiving notice in ASMT-10 accept the discrepancy and pay the tax, interest and any other sum payable as mention in it, also furnish a reply with explanation in FORM GST ASMT-11 to the proper office for such discrepancy.
- **GST ASMT -12:** – After furnishing the reply with explanation by registered person and if it is found to be acceptable then proper officer stops any further inquiry and inform him accordingly in FORM GST ASMT-12.

Type of Form	Purpose	User	Rule
ASMT-10	Service of a notice to get information and explanation within 30 days or further period as may be permitted for such discrepancy, and where possible also quantifying tax, interest and any other sum payable.	Proper officer	Rule 99(1)
ASMT-11	Reply with explanation for such discrepancy with payment details if any	Registered person	Rule 99(2)
ASMT-12	Intimation of accepting reply after considering explanation and inform.	Proper officer	Rule 99(3)

Guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns

- (i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.
- (ii) Once the due date for furnishing return under section 39 is over, a system generated mail/ message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/ message is to be sent to the authorized signatory as well as the proprietor/ partner/ director/ karta, etc.
- (iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring them to furnish return within 15 days.

Assessment of Non Filers of Return

Assessment of non filers of returns (Sec 62 of CGST Act). (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual

return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Departmental Procedure for Assessment

- **GSTR-3A, (Rule 68):** – Notice in form GSTR-3A in a manner prescribed for furnishing return within 15 days for completing assessment.
- **GST ASMT-13, Rule 100 (1):** – After considering all information and record available him proper officer issue an order with summary uploaded electronically in FORM DRC-07.

Guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns

- (iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter under section 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.
- (v) For the purpose of assessment of tax liability under section 62, the proper officer may take into account the following:
 - ☐ Details of outward supplies available in GSTR-1
 - ☐ Details of inward supplies auto-populated in GSTR-2A
 - ☐ Information available from e-way bills
 - ☐ Any other information available from any other source including inspection under section 71 of the CGST Act

Guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns

- (vi) If the defaulter furnishes a valid return within 30 days of the service of assessment order under section 62, the said assessment will be deemed to have been withdrawn.
- (vii) If the said return remains unfurnished within the statutory period of 30 days from the service of assessment order under section 62, the proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29

[Circular No. 129/48/2019 GST dated 24.12.2019]

Assessment of Unregistered Persons

Section 63 of CGST Act, 2017 deals with assessment of unregistered persons or persons whose registration had been cancelled but they were liable to pay GST. This section is one of the triggers for making assessment as best judgment assessment.

According to section 63 of CGST Act, 2017, proper officer may proceed to assess the tax liability of a taxable person who did not seek the registration under GST Act even when he was liable for the same.

This section overrides the provisions of section 73 and 74 of the CGST Act, 2017.

It may be noted that a person whose registration has been cancelled by the proper officer under section 29(2) of the CGST Act, 2017, but such person was liable to pay tax and the registration was cancelled due to various reasons as provided in section 29(2). Such person would also be considered as unregistered person for the purpose of applicability of section 63.

Assessment of Unregistered Person

Flow of events for Order under section 63 of CGST Act, 2017

<i>Sequence</i>	<i>Event</i>	<i>Time</i>
(A)	Proper officer to issue notice to taxable person	On noticing the default
(B)	Intimation of grounds on which best judgment assessment is proposed	On noticing the default
(C)	Summary of notice electronically uploaded	After issuance of notice
(D)	Reply by taxable person / opportunity of being heard	Within 15 days of notice
(E)	Assessment order	Within 5 years from the date of relevant annual return
(F)	Summary of order electronically uploaded	After issuance of order

Assessment of Unregistered Person

The Proper Officer shall issue a notice to a taxable person in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis. In Re: *Narayan Builders and Developers (2021) 47 GSTL 88 (Commissioner Appeals, Rajasthan)*, where show cause notice was not issued for issuing order under section 62 of CGST Act, 2017 and registration of appellant was cancelled, it was held that provisions of section 63 of CGST Act, 2017 shall be applicable as the best judgment assessment has been passed by the adjudicating authority. It was directed that notice be issued under section 63 of CGST Act, 2017 in FORM GST ASMT-14 as per rule 100(2) of CGST Rules, 2017.

The Proper Officer, in relation to assessment of taxes on the unregistered taxable person, shall issue the assessment order in FORM GST ASMT-15 within a period of 5 years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax unpaid relates.

According to proviso to section 63 of CGST Act, 2017, no such assessment order shall be passed without giving a notice to show cause and without giving the person a reasonable opportunity of being heard. Thus, order can be passed only after observing the principles of natural justice.

Assessment of Unregistered Person

Applicable Rules and Forms

According to Rule 100 of CGST Rules, 2017, the sub-rule (2) provides as follows:

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in FORM GST DRC-01, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in FORM GST DRC-07.

Accordingly, following forms are required to be used for various purposes and are to be filed online:

S.No.	Form No.	Purpose
1.	<u>GST ASMT – 14</u>	Notice to taxable person
2.	<u>GST DRC – 01</u>	Summary of notice to be uploaded electronically
3.	<u>GST ASMT – 15</u>	Assessment order
4.	<u>GST DRC-07</u>	Summary of order to be uploaded electronically

Best Judgment Assessment Failure to file Return:-

Every registered person liable to file return, if when registered person have not furnish return under sec 39 (GSTR 3B/4) or sec 45 (GSTR-10) even after service of notice then proper officer has only one way to complete assessment after considering information, data and records available with him, which means proper officer shall pass an order in their best judgment and if registered person furnish a valid return then proper officer drop the assessment only if all tax and any sum payable has been deposited in full.

Best judgment assessment does not deal with sec 37 and 44 of Act if any registered person did not file GSTR-1 and GSTR-9 then proper officer may not take appropriate action in sec 62 of **CGST ACT**.

Summery Assessment

Assessment in certain special cases (Summary Assessment): –

Whenever proper officer has come to know and also has reason to believe that an assessment order must be passed to taxable person for protect the interest of revenue then with prior permission of additional commissioner and joint commissioner, he shall assess the tax liability of such person and issue an assessment order,

Also, if taxable person not ascertainable then person in charge of such goods shall be deemed to taxable person and liable to be assessed and pay.

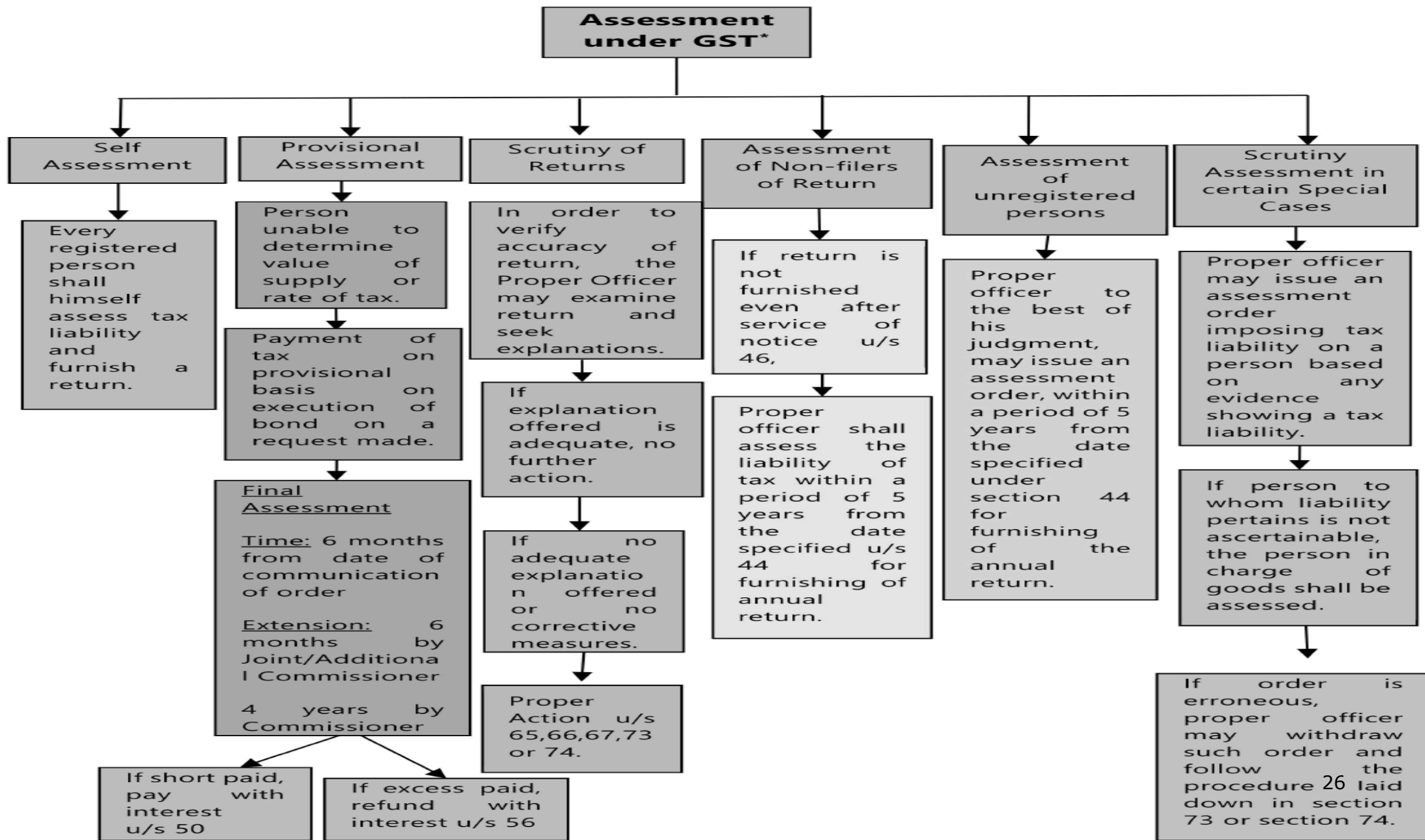
Summary assessment in certain special cases (Section 64 of CGST Act): – (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue 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:

Provided that where the 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.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

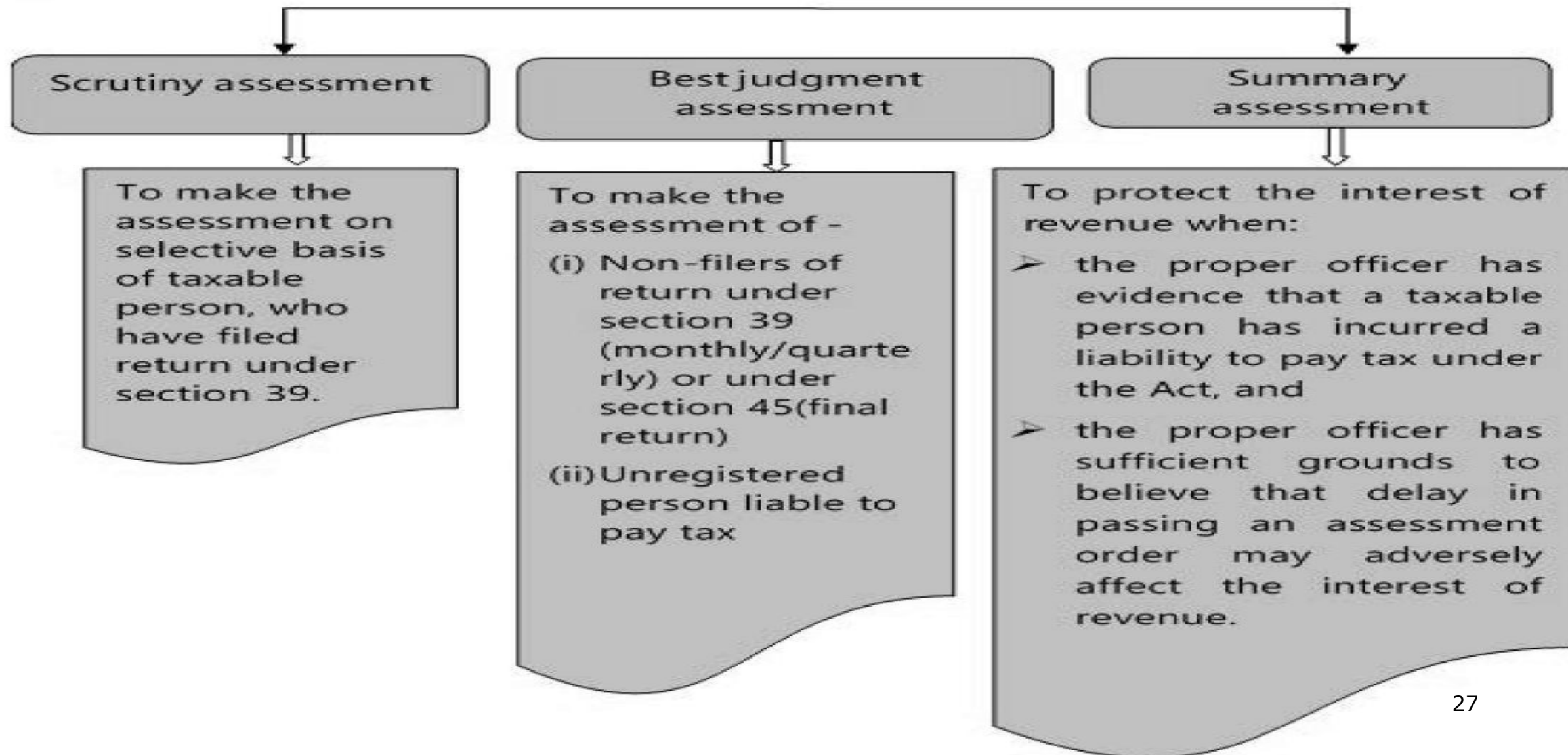
Departmental Procedure for Assessment

- **GST ASMT-16, Rule 100(3):** – Under this assessment, order shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC 07**.
- **GST ASMT-17, Rule 100(4):** – Taxable person may file an application for withdrawal of the assessment order in **FORM GST ASMT-17**.
- **GST ASMT-18, Rule 100(5):** – The order of withdrawal or, as the case may be, rejection of the application shall be issued in **FORM GST ASMT-18**.



Different types of assessments which may be conducted by the department against the taxable person

There are three different type of assessments, which may be conducted by tax authorities



Procedure for Assessment under GST

- ❖ **Issue of Notice:** The tax authorities can issue a notice to the taxpayer, asking them to provide additional information or documents to support their returns. The notice must specify the reason for the assessment, the period under assessment, and the nature of the information or documents required.
- ❖ **Issue of Assessment Order:** Based on the information obtained through the notice and audit, the tax authorities can issue an assessment order. The assessment order specifies the final amount of tax to be paid by the taxpayer. The assessment order can also include interest, penalties, and fines, if applicable.
- **Conduct of Audit:** The tax authorities can conduct an audit of the taxpayer's records to verify the correctness of their returns. The audit can be done on-site or off-site, and the taxpayer must provide all necessary information and documents to the auditors.
- ❖ **Rectification of Errors:** If the taxpayer disagrees with the assessment order, they can request rectification of errors. The request must be made within 30 days of the receipt of the assessment order. The tax authorities will then review the request and issue a revised assessment order if necessary.

Procedure for Assessment under GST

❖ **Appeal:** If the taxpayer is still dissatisfied with the assessment order after rectification, they can file an appeal with the appropriate appellate authority. The appeal must be filed within three months of the receipt of the assessment order. The appellate authority will then review the case and issue a final order. Read more about Grounds of GST Appeal [here](#).

❑ **Importance of Assessment under GST**

- ❑ **Ensures Compliance:** Assessment ensures that taxpayers are complying with the GST laws and regulations. GST Compliance is crucial for a smooth business work-flow. This helps prevent tax evasion and ensures that the government collects tax revenue correctly.
- ❑ **Detects Errors and Discrepancies:** Assessment helps detect any errors or discrepancies in the returns filed by taxpayers. This helps prevent the loss of tax revenue due to mistakes or intentional evasion.
- ❑ **Improves Taxpayer Education:** Assessment helps educate taxpayers on the correct procedures for calculating and paying their taxes. This helps improve GST compliance and reduces the number of errors or discrepancies in the returns filed.

Procedure for Assessment under GST

Common Mistakes to Avoid

- ❑ **Incorrect classification of goods and services:** GST rates vary depending on the classification of goods and services. Taxpayers need to ensure that they classify their goods and services correctly to avoid incorrect assessments.
- ❑ **Incorrect calculation of tax liability:** Taxpayers must ensure that they accurately calculate their tax liability based on the GST rates applicable to their goods or services. Incorrect calculation can result in incorrect assessment and penalties.
- ❑ **Delayed filing of returns:** GST returns must be filed on time to avoid penalties and interest. Taxpayers must ensure that they file their returns by the due date to avoid any additional charges.
- ❑ **Failure to report input tax credit:** Taxpayers are allowed to claim the input tax credit on their purchases to reduce their tax liability. Failure to report input tax credit can result in incorrect assessment and penalties.
- ❑ **Incorrect reporting of turnover:** Taxpayers must ensure that they report their turnover

Q&A

