

ASSESSMENT UNDER GST

Introduction –

- In terms of section 2(11) of the Act, “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.
- It is important to note that there is no provision permitting a Proper Officer to re-assess the tax liability of taxable person. The provisions of the law permit a registered person to rectify any incorrect particulars furnished in the returns. In terms of section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars as are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred (i.e., after 30th November following the end of the financial year, or the actual date of furnishing of relevant Annual Returns, whichever is earlier).
- It is normally understood that an Assessment is conducted by a Proper Officer. In terms of section 2(91) of the CGST Act, 2017, a “Proper Officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner.
- GST law is a voluntary compliance-based taxation system. One of the key features of GST is its self-assessment system. The entire responsibility for assessment of tax liability has been entrusted upon with the taxable person or the Business entity in line and spirit of the GST laws.
- The standard norm in tax laws is to make the supplier responsible for tax assessment, because the supplier alone is aware of the details of his supply and all elements of value that are relevant for arriving at taxable value. This means that taxpayers are required to self-assess their tax liability and file their returns accordingly.
- Assessment under GST is a crucial process that helps to ensure that taxpayers are complying with the GST laws and regulations. The law has put onus of self-assessment on the taxpayers with a strong compliance verification mechanism in place to ensure that the tax liabilities are discharged appropriately and in time. The officer will step into the area of assessment of tax liabilities only in cases the legislation warrants him to do so in specified situations.
- The word assessment is used in a comprehensive sense and includes all proceedings, starting with the filing of the return or issue of notice and ending with the determination of the tax payable by the taxpayer and its recovery by the proper officer.

Importance of Assessment under GST -

Assessment under GST is important for the following reasons:

- **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.

Errors Commonly Committed While Discharging Tax Liability -

It is crucial to understand the common errors the taxpayers are making while filing the statutory returns. These errors can result in incorrect assessment which ultimately leads to short payment or non-payment of tax. Some of the common errors made while filing the returns are as under:

- **Incorrect classification of goods and services:** GST rates vary depending on the classification of goods and services. It has to be ensured from the returns that the supply of goods and services are correctly classified and the tax rate applied for determining the tax payable is correct.
- **Delayed filing of returns:** The statutory GST returns should be filed on or before the due dates, failing which interest is attracted at prescribed rate and penal clauses are attracted.

- **Failure to report input tax credit:** Taxpayers are allowed to claim the input tax credit on their purchases goods (inputs) and/or services (input services), which are utilised for discharging the tax liability on supply of goods and/or services. Failure to report input tax credit correctly can result in incorrect assessment and in case of wrong availment of the input tax credit, interest at prescribed rate and besides recovery of such wrongly availed input tax credit, penalty is also attracted.
- **Incorrect reporting of turnover:** It has to be ensured that the taxpayers report their turnover correctly to avoid incorrect assessment.

Types of Assessment under GST –

The following are the types of assessment under GST:

- By Taxpayer (Self-Assessment) (Sec 59 of CGST Act, 2017)
- By Proper Officer
 - Provisional Assessment (Sec 60 of CGST Act, 2017)
 - Summary Assessment (Sec 64 of CGST Act, 2017)
 - Scrutiny of Returns (Sec 61 of CGST Act, 2017)
 - Best Judgement Assessment
 - Assessment of Non-Filers (Sec 62 of CGST Act, 2017)
 - Assessment of Unregistered Persons (Sec 63 of CGST Act, 2017)

Self-Assessment -

- Section 59 of the CGST Act, 2017, provides that every registered person shall self-assess the taxes payable and furnish the prescribed return for each tax period. This is the first level of assessment, which is done by the taxpayers themselves. In self-assessment, the taxpayer calculates and declares his tax liability in the returns filed and pays his tax liability at the time of filing the return. This is done on a monthly, quarterly or annual basis, depending on the turnover of the taxpayer. (Section 59 of CGST Act, 2017). Self-assessment does not mean 'unsupervised self-administration'.
- Self-Assessment does not confer authority of an assessing officer on the taxpayer. A taxpayer is required to exercise this liberty to assess tax liability voluntarily with the risk of interest and penalty for any miscalculations or misinterpretations without usurping the role of proper officer.
- Tax which is self-assessed consists of self-determination of (i) supply not excluded by schedule III (ii) taxability of supply not covering alcohol, 5-petro product or securities (iii) classification – goods or services (iv) exemption (v) liability on taxable person on forward charge and not on recipient on reverse charge basis (vi) valuation with inclusions and exclusions (vii) admissibility of input tax credit and (viii) determination of 'net tax' liability.
- If the taxpayer discovers any omission or incorrect particulars in the returns furnished by him, other than the omissions or commissions pointed out by the proper officer consequent to scrutiny of return or audit or inspection or incorrect particulars, then the taxpayer has to rectify such omissions or incorrect particulars and pay the differential tax, if any, along with interest.
- The rectification mentioned above is allowed to be carried out only till the 30th day of November following the end of financial year to which such omissions or incorrect particulars pertain to or the actual date of filing of the Annual Return of the relevant financial year, whichever is earlier.
- Final Assessment – If the department accept the self-assessment, it will become final assessment.
- Re-assessment - If department noticed any discrepancies, it will become re-assessment.

Provisional Assessment –

- As per section 60 (1) of the CGST Act, 2017 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.

- He may furnish an application in prescribed form stating there in the reasons for payment of the tax on a provisional basis along with the documents in support of his request, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
- The proper officer (i.e. The Asst. Commissioner / Dy. Commissioner of Central Tax) shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis indicating
 - the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis, and
 - the amount* for which the bond is to be executed and security to be furnished. The value of security cannot exceed 25% of the amount* covered under the bond.
- The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination.
- On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

Furnishing of Bond and Security - The payment of tax on a provisional basis may be allowed, if the taxable person executes a bond in the prescribed form along with the security.

The bond is a document whereby the taxpayer binds himself (i.e., agrees) to pay the differential tax, if any, payable on finalization of the provisional assessment. The security is required to be furnished in the form of a bank guarantee for an amount* as the proper officer may deem fit (subject to 25% of the amount* covered under the bond).

In order to save a taxpayer from the requirement of submitting separate bonds for different taxes, the GST law provides that the bond furnished to the proper officer under the Central/State Goods and Services Tax Act/Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the other Acts and the rules made there under.

*the term "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.

Finalization of Provisional Assessment -

The final assessment order has to be passed by the proper officer within a period of 6 months from the date of the communication of the order of provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the above period of 6 months may be extended:

- (a) By the Joint/Additional Commissioner for a further period not exceeding 6 months, and
- (b) by the Commissioner for such further period as he may deem fit not exceeding 4 years

For finalization of assessment, proper officer shall issue a notice in prescribed form, calling for such information and records, as may be required and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any.

Interest Liability -

- **Where the tax liability as per the final assessment is higher than the provisional assessment**, i.e. the tax becomes due consequent to the order of final assessment: The registered person in addition to the differential tax shall be liable to pay interest on the tax due but not paid, at the rate specified under section 50(1) from the date the tax was due to be paid originally till the date of actual payment.

In simple words, in case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the taxable person from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

- **Where the tax liability as per the final assessment is less than in provisional assessment** i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate

specified under section 56 for any period exceeding 60 days from the date of receipt of application moved in accordance with the provisions of Section 54(1), till the date of refund of such tax.

In simple words, in case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) is payable at the specified rate for the period of delay (i.e., beyond 60 days from the date of the final assessment order).

Release of Security -

The applicant may file an application for release of the security furnished after issue of the final assessment order. The proper officer shall release the security after ensuring that applicant has paid the amount specified in the final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.

Procedure of Provisional Assessment

- The supplier requesting for payment of tax on a provisional basis has to furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal.
- The Asst. Commissioner/Dy. Commissioner of Central Tax will scrutinize the application in FORM GST ASMT-01. In case, additional information or documents in support is required by the Asst. Commissioner/Dy. Commissioner of Central Tax to decide the case, notice in FORM GST ASMT-02 will be issued to the supplier requesting for submission of the same
- The supplier has to file a reply to the notice in FORM GST ASMT-03, and if he desires can also appear in person before the Asst. Commissioner/Dy. Commissioner of Central Tax to explain his case.
- The Asst. Commissioner/Dy. Commissioner of Central Tax will then issue an order in FORM GST ASMT-04 within a period not later than ninety days from the date of receipt of the request, allowing the payment of tax on a provisional basis.
- The security will not exceed twenty-five percent of the amount covered under the bond. The supplier has to execute the bond in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as mentioned in FORM GST ASMT-04.
- On executing the bond, the process of the provisional assessment is complete and the supplier can supply the goods or services or both and pay the tax at the rate or on the value that has been indicated in the order in FORM GST ASMT-04.
- The provisional assessment will be finalized, within a period not exceeding six months from the date of issuance of FORM GST ASMT-04.
- The Asst. Commissioner/Dy. Commissioner of Central Tax will issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.
- Once the order in FORM GST ASMT-07 is issued, the supplier has to file an application in FORM GST ASMT-08 for the release of the security furnished.
- On receipt of this application the Asst. Commissioner/Dy. Commissioner of Central Tax will issue an order in FORM GST ASMT-09 within a period of seven working days from the date of the receipt of the application, releasing the security after the amount payable if any as specified in FORM GST ASMT-07 has been paid.

Scrutiny of Returns –

➤ 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. It is a non-compulsory pre-adjudication process

➤ Issue of notice (Form GSTR ASMT -10) -

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.

Circumstances under which Form GST ASMT-10 is issued:

- Short payment of Tax, i.e., Diff between GSTR-1 Vs. GSTR-3B
- Excess ITC claimed in GSTR-3B Vs. Auto Populated in GSTR-2A / 2B
- RCM not paid compared with Auto Populated in GSTR- 2A / 2B
- Additional Turnover declared in GSTR-9 but Tax not paid through DRC-03.

➤ **Reply to notice (Form GST ASMT – 11) -**

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.

➤ **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 in Form GST ASMT-12 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.

Summary Assessment –

- Summary assessment means a fast-track assessment based on the return filed by the taxpayer and is done in certain special cases to protect the interest of revenue. Summary assessment is usually done in cases of defaulting or absconding taxpayers when the tax authorities believe that the taxpayer is trying to evade tax or when there is a threat to revenue.
- Before initiation of Summary Assessment, there must be evidence of tax liability and the proper officer should have sufficient ground that delay in assessment may adversely affect the interest of revenue. Therefore, the assessment is required to be completed on priority basis without the presence of the taxpayer.
- Section 64 of the CGST Act, 2017 empowers the proper officer to carry out Summary Assessment with prior permission of the Additional Commissioner or Joint Commissioner, if he has evidence that the taxpayer has incurred a liability to pay tax and has sufficient ground to believe that delay in passing order will adversely affect the interest of revenue. That means, Summary Assessment cannot be initiated by the proper officer suo-moto.
- Summary assessments are often carried out in situations where it is not possible to identify the taxable person concerned in a case of supply of goods. If some person comes forward to claim the ownership of the unaccounted goods and to pay tax thereon, then for that he will be the taxable person. When the taxable person is not ascertainable then as per proviso to Section 64(1) of the CGST Act, 2017, in such cases the person in charge of such goods at that relevant time shall be deemed to be the taxable person and the tax liability is fastened on such person.
- The procedure to be followed in respect of Summary Assessment is provided in Rule 100 of the CGST Rules, 2017.
- There is no provision to issue any notice before passing the assessment order. However, opportunity to produce documents showing details of goods and to prove that such goods are accounted is given during the course of the Summary Assessment proceedings.

- Rule 100(3) CGST Rules, 2017 provides for issuance of order of assessment in FORM GST ASMT-16 and the summary of the order shall be uploaded electronically in FORM GST DRC-07.
- No time limit has been prescribed for passing the above said order. It is necessary to pass a speaking order containing introduction, discussion and finding, conclusion, amount of all applicable taxes (CGST/SGST/IGST) assessed, interest and penalty payable.
- Section 64(2) of the CGST Act, 2017 provides that the taxable person against whom the Summary Assessment order is passed, can apply to the Additional Commissioner or Joint Commissioner electronically in FORM GST ASMT-17 for withdrawal of said order, within 30 days from the date of receipt of the order. The Additional Commissioner after considering the grounds made by such taxable person in his application shall either withdraw the Summary Assessment order if the same is found erroneous or reject the application if the grounds are not legally acceptable. The order of withdrawal of Summary Order or rejection of the application of taxable person, has to be issued in FORM GST ASMT-18.

Best Judgement Assessment –

As per Section 62 of the CGST Act, 2017 (i.e. assessment of non-filers of return) provides for best judgment assessment where a registered person fails to furnish the return even after the service of a notice and pass order taking into account all the relevant material which is available or which he has gathered within a period of five years from the due date of filing annual return. Similar provision exists for unregistered persons under Section 63 of the CGST Act, 2017.

Best Judgment Assessment In Respect Of Non-Filers

- Assessment in respect of the non-filers of statutory returns is vital for maintaining compliance and identifying taxpayers who haven't met their filing responsibilities. Continuous vigil is maintained on the GST portal to pinpoint registered taxpayers who fail to submit their returns by the specified deadlines. Through the GST system, reports and alerts are automatically generated for non-filers, aligned with the frequency of return filing, whether it's on a monthly, quarterly, or annual basis.
- Intimations are sent to non-filers, outlining their failure to submit returns within the set timeframe. If the taxpayer disregards the intimation or fails to file the necessary returns within the specified duration after receiving the intimation/ notice, assessment proceedings can be initiated.
- In case of absence of any of the essential points required for regular assessment, i.e., non-submission of documents and records by taxable person, proper officer not satisfied with the correctness of records submitted by taxable person or taxable person not co-operating with proper officer for enabling him to complete the regular assessment, in such cases, the proper officer will determine the tax liability of the taxable person to the best of his judgement on the basis of records, documents or any other information in possession of such proper officer.
- In such cases either no documents or records are furnished/claims are not substantiated or the records and/or evidence produced before the proper officer are rejected as being unreliable or incomplete/incorrect, either wholly or in part.
- Section 62 of the CGST Act, 2017 provides for best judgement assessment in respect of such non-filers of returns prescribed under Section 39 or Section 45.
- Section 46 of the CGST Act, 2017 read with Rule 68 of CGST Rules, 2017 provides for issuance of notice in FORM GSTR-3A to the person who fails to file the statutory returns, viz, GSTR-3B return and GSTR-10 (Final Return), prescribed under Section 39 and 45, respectively. Issuance of notice under Section 46 operates as a pre-condition for initiating proceedings under Section 62 of the said Act.
- Section 62 of the CGST Act, 2017 states that if a registered taxable person fails to furnish the return under Section 39 or Section 45 even after the service of a notice under Section 46, which provides for issuance of notice to the non-filers, the proper officer may assess the tax liability of such person to the best of his judgement taking into account all the relevant material available or which he has gathered and issue an assessment order within a period of five years from the due date for furnishing of the annual returns for the financial year to which the tax not paid relates.

- The provisions of Section 62 can be invoked only in case of registered taxable persons who have failed to file returns, as required, under Section 39 or final return on cancellation of registration under Section 45 of the Act. Section 62 cannot be invoked for non-filing of GSTR-1 or GSTR-9 Annual Return.
- If the taxpayer fails to furnish the return within 15 days of issue of notice under Section 46 then the proper officer may assess the tax liability in accordance with the provisions of Rule 100 (Summary Assessment) of the CGST Rules, 2017.
- The Best Judgement Assessment has to be made on the basis of the material available on record and the information gathered by the proper officer and the circumstances of each case.
- In terms of Rule 100 of the CGST Rules, 2017, the order of assessment made under Section 62(1) has to be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.
- If the taxpayer furnishes a valid return within 30 days of the service of the above said assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under Section 50(1) or for the payment of late fee under Section 47 shall continue.
- However, if the taxpayer fails to furnish a valid return within sixty days of the service of the said assessment order, he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay 'beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest or to pay late fee will remain.
- In case returns are not filed within 30 days even after the order of best judgement is passed under Section 62, the order becomes final and even if returns are filed subsequently, the order cannot be withdrawn.
- Since FORM GST DRC-07 will also be issued, best judgement assessment under section 62 will lead to recovery of tax assessed and demand made in order in FORM GST ASMT-13.

Assessment Of Unregistered Persons -

- Section 63 of the CGST Act, 2017 provides that when 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, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods.
- Under Section 63 of the CGST Act, 2017, even when a taxable person is 'unregistered', the proper officer is vested with jurisdiction to not only identify taxable transactions but also pass an order of assessment on best judgement basis and fasten an enforceable demand. However, once registration is obtained, use of best judgement method permitted in case of unregistered persons cannot be applied against registered persons even for the period prior to their date of registration.
- For assessment of unregistered person, the proper officer has to resort to third party sources like information shared with Income Tax, ROC, etc. Information can also be gathered by initiating search and seizure proceedings after taking necessary approvals of the Competent Authority.
- The proper officer will issue an assessment order within a period of five years from the due date for furnishing of the annual return for the financial year to which the tax not paid relates. No such assessment order shall be passed without giving the person an opportunity of being heard.
- Rule 100(2) of the CGST Rules, 2017 prescribes that 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.
- After allowing a time of fifteen days to furnish reply, if any, the proper officer shall pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in FORM GST DRC-07.

Forms	Available for	Description of the Form
FORM GST ASMT - 01	For Taxpayer	Application for Provisional Assessment under section 60
FORM GST ASMT - 02	For Tax Official	Notice for Seeking Additional Information/Clarification/ Documents for provisional assessment
FORM GST ASMT - 03	For Taxpayer	Reply to the notice seeking additional information
FORM GST ASMT - 04	For Tax Official	Order of Provisional Assessment
FORM GST ASMT - 05	For Taxpayer	Furnishing of Security
FORM GST ASMT - 06	For Tax Official	Notice for seeking additional information / clarification / documents for final assessment
FORM GST ASMT - 07	For Tax Official	Final Assessment Order
FORM GST ASMT - 08	For Taxpayer	Application for Withdrawal of Security
FORM GST ASMT - 09	For Tax Official	Order for release of security or rejecting the application
FORM GST ASMT - 10	For Tax Official	Notice for intimating discrepancies in the return after scrutiny
FORM GST ASMT - 11	For Taxpayer	Reply to the notice issued under section 61 intimating discrepancies in the return
FORM GST ASMT - 12	For Tax Official	Order of acceptance of reply against the notice issued under section 61
FORM GST ASMT - 13	For Tax Official	Assessment order under section 62
FORM GST ASMT - 14	For Tax Official	Show Cause Notice for assessment under section 63
FORM GST ASMT - 15	For Tax Official	Assessment order under section 63
FORM GST ASMT - 16	For Tax Official	Assessment order under section 64
FORM GST ASMT - 17	For Taxpayer	Application for withdrawal of assessment order issued under section 64
FORM GST ASMT - 18	For Tax Official	Acceptance or Rejection of application filed under section 64 (2)