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Coverage

- Assessments under GST – Theory in brief;
- Self Assessment;
- Provisional Assessment;
- Scrutiny of Returns;
- Assessment of Non-filers of Returns;
- Assessment of Un-Registered Persons;
- Summary Assessment in certain Special Cases;
- Determination of Tax Proceedings initiated U/S 73 and U/S 74;
- Proceedings initiated for Tax Collected but not Deposited with the Govt;
- General Penalty Proceedings U/S 125;
- Filing Reply for proceedings initiated for Remanded Cases;

Audit Vs. Assessment

- **Section 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;
- The term **‘Assessment’** is thus, defined in an **inclusive manner**.
- The expressions used in the definition related to various types of Assessments **are not defined** in the CGST Act.
- **Chapter XII of the CGST Act** titled **‘Assessment’** contains the provisions relating to the various types of Assessments contemplated in the definition of **‘Assessment’**.
- **Section 2(13) - “Audit”** means the **examination of records, returns and other documents maintained or furnished by the registered person** under this Act or the rules made thereunder or under any other law for the time being in force **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 thereunder

What is Assessment?

- **‘Assessment’**, in simple words, means the process of **determination of the amount of tax payable**;
- **Levy, Assessment and Collection** are the three angles of the **taxation triangle**. ‘Assessment’ comes between the stages of levy and collection;
- In ***Bhopal Sugar Industries vs. State of MP – AIR 1979 SC 357***, the Supreme Court observed: ***“‘Assess’ in a taxing statute means the computation of the income of assessee, the determination of tax payable by him and the procedure for collecting or recovering the tax.”***
- In ***Kalavati Devi vs. CIT – AIR 1968 SC 162***, the Apex Court observed: ***“The word ‘assessment’ in its comprehensive sense as including the whole procedure for imposing liability upon the tax payer”***

Legal Provisions related to Assessments under GST

Description	Chapter	Section	Rule
Self Assessment	XII	59	--
Provisional Assessment	XII	60	98
Scrutiny of Returns	XII	61	99
Assessment of Non-filers of Returns	XII	62	100
Assessment of Un-registered Persons	XII	63	100
Summary Assessment in certain special cases	XII	64	100

Relevant Sections relating to Assessments

Section	Description
5	Powers of Officers under GST;
6	Authorization of Officers of State Tax or Union Territory tax as Proper Officer in certain circumstances;
22	Persons liable for registration;
24	Compulsory Registration in certain cases;
25	Procedure for registration;
29	Cancellation or suspension of Registration;
37	Furnishing details of outward supplies;
38	Furnishing details of inward supplies;
39	Furnishing of Returns;
40	First Return;
41	Claim of Input Tax Credit and Provisional acceptance thereof;
44	Annual Return;
45	Final Return;
46	Notice to Return Defaulters
49	Payment of tax, interest, penalty and other amounts;
49(8)	Payment of Tax - Order of Adjustment;
50	Interest on delayed payment of tax;

Relevant Sections relating to Assessments

Section	Description
54	Refund of Tax;
59	Self-assessment;
65	Audit by tax authorities;
67	Power of Inspection, Search and Seizure;
71	Access to Business premises;
73	Demands and Recovery;
74	Determination of tax not paid or short paid or erroneously refunded or Input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts;
75(12)	General Provision relating to determination of tax;
78	Initiation of Recovery Proceedings;
79	Recovery of Tax;
80	Payment of Tax and other amount in instalment;
107	Appeals to Appellate Authority;
174	Repeal and Savings;

Relevant Definitions

Section 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;

Section 2(91) – “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 in the Board;

Section 2(94) – “Registered Person” means a **Person who is registered under Section 25** but does not include a Person having Unique Identity Number;

Section 2(97) – “Return” means **any return prescribed or otherwise** required to be furnished by or under this Act or the Rules made thereunder;

Relevant Definitions

Section 2(107) – “Taxable Person” means **a Person who is registered or liable to be registered** under Section 22 or Section 24;

Section 2(117) – “Valid Return” means **a return furnished** under sub-section (1) of Section 39 on which self-assessment tax has been paid in full;

Section 2(106) – “Tax Period” means the period for which the return is required to be furnished;

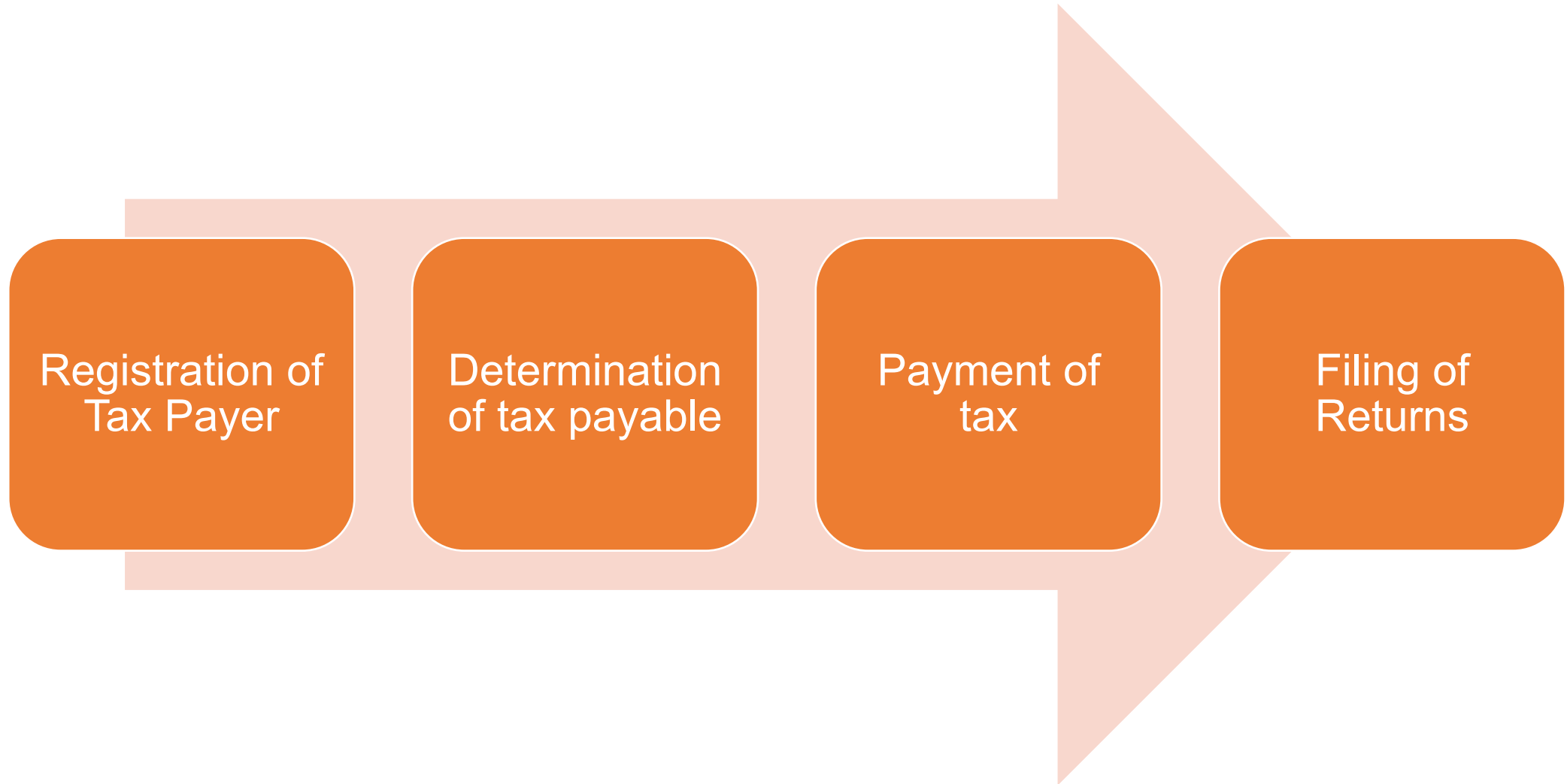


Section 59 of GST Self assessment with introduction and Analysis

Self Assessment – Section 59 of CGST Act

- “Every **Registered Person** shall self-assess the tax payable under this Act and furnish a **return** for each tax period as specified under **Section 39**”;
- **Key facts:**
 - ✓ **Self-assessment regime**, as was prevalent in the erstwhile Central Excise and Service Tax and VAT regimes, **has been continued under GST**;
 - ✓ Tax payers have been entrusted with the responsibility to mandatorily assess and discharge their own tax liability by furnishing of returns, **after considering the aspects such as taxability, classification, valuation, exemption, etc.;**
 - ✓ Any short payment or non-payment of tax, **whether or not intentional**, as a result of such ‘Self Assessment’ may consequently, **lead to litigation**.
 - ✓ The **importance of ‘self-assessment’**, therefore, cannot be **understated**.

Stages of Self-Assessment



Important provision under Section 39 of CGST Act

Section 39 – Furnishing of Returns:

Section 39(9):

*“Where **any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein**, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, **he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act:***

*Provided that no such rectification of any omission or incorrect particulars shall be allowed after the **thirtieth day of November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.***

Self-Assessment Returns

Section	Description	Rule	Form
39(1)	Self-Assessment by Regular Assessee and Casual Taxable Person;	61(1)	GSTR 3B
39(2)	Self-Assessment by Composition Dealer;	62	GSTR 4
39(5)	Self-Assessment by Non-Resident Taxable Person;	63	GSTR 5
39(1)	Self-Assessment of Online Information Database Access or Retrieval Services (OIDARS) provided by person located outside India to non-taxable person in India;	64	GSTR 5A
39(4)	Self-Assessment by Input Service Distributor (ISD);	65	GSTR 6
39(3)	Self-Assessment Tax Deducted At Source (TDS);	66(1)	GSTR 7
52(4)	Self-Assessment Tax Collected At Source (TCS);	67(1)	GSTR 8
39(1)	Self-Assessment for purpose of Refund by person having UIN;	82	GSTR 11
44	Annual Return;	80	GSTR9

Verification of Self-Assessment

- There is no Departmental Assessment in case of self-assessment;
- Burden of proof of Self-Assessment lies on the taxpayer;
- Though Self-Assessment does not involve any assessment on the part of Department, an erroneous Self-Assessment may attract following provisions apart from provisions relating to **Chapter XII - Assessment**:

Section	Relating to
65	Audit by tax authorities;
66	Special Audit;
67	Power of inspection, search and seizure;
68	Inspection of goods in movement;
69	Power to arrest;
70	Power to summon persons to give evidence and produce documents;
71	Access to business premises;
72	Officers to assist Proper Officers;



PROVISIONAL ASSESSMENT UNDER GST



Filing of Application for Provisional Assessment and Release of Security;

Provisional Assessment – Section 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 there to**, he may request the proper officer in writing giving reasons for payment of tax **on 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 – Section 60 of CGST Act

(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.***

Provisional Assessment – Section 60 of CGST Act

*(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 – Rule 98 of CGST Rules

(1) Every registered person requesting for payment of tax **on a provisional basis** in accordance with the provisions of subsection (1) of section 60 shall furnish an application along with the documents in support of his request, **electronically in FORM GST ASMT-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in **FORM GST ASMT-02** requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in **FORM GST ASMT - 03**, and may appear in person before the said officer if he so desires.

(3) The proper officer shall issue an order in **FORM GST ASMT-04** allowing the payment of tax **on a 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 **not exceeding twenty-five per cent.** of the amount covered under the bond.

(4) The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in **FORM GST ASMT-05** along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

Provisional Assessment – Rule 98 of CGST Rules

*Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act **shall be deemed to be a bond** furnished under the provisions of the Act and the rules made thereunder.*

Explanation .-For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

(5) The proper officer shall issue a notice in **FORM GST ASMT-06** , calling for information and records required for finalization of assessment under sub-section (3) of section 60 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** .

(6) The applicant may file an application in **FORM GST ASMT-08** for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).

(7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in **FORM GST ASMT-09** within a period of seven working days from the date of the receipt of the application under sub-rule (6).

Taxable Person Vs. Registered Person

- **Section 2 (107)** – “**Taxable Person**” means a **person who is registered or liable to be registered** under section 22 or section 24;
- **Section 2 (94)** – “**Registered Person**” means a **person who is registered** under section 25 but does not include a person having a Unique Identity Number;
- **Section 60(1)** – “Subject to the provisions of sub-section (2), **where the taxable person is unable to determine...**”;
- **Section 60(2)** – “The payment of tax on provisional basis may be allowed, **if the taxable person** executes a bond....”;
- **Section 60(4)** – “**The registered person** shall be liable to pay interest on any tax payable on the supply of goods or services or both;
- **Section 60(5)** - **Where the registered person is entitled to a refund**”

Taxable Person Vs. Registered Person

- **Rule 98 (1)** *“Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of subsection (1) of section 60....”;*
- **Rule 98 (2)** *The proper officer may, on receipt of the application under sub-rule (1), issue a notice in **FORM GST ASMT-02** requiring the registered person to furnish additional information or documents.....;*
- **Rule 98 (4)** *The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 ...”;*
- The meaning of “**Taxable Person**” and “**Registered Person**” is not identical.
- Section 60(1) and Section 60(2) mentions “**Taxable Person**”; whereas Section 60(4), Section 60(5) and Rule 98 emphasize need for resorting to formalities for Provisional Assessment by “**Registered Person**”.

Procedure for Provisional Assessment U/S 60

When A Taxable Person is unable to determine:

(a) Value of goods or service; (b) Rate of tax applicable;

Request Proper Officer in **ASMT-01** (Electronically) for payment of tax on provisional basis;

Officer may ask to submit additional documents in **ASMT-02**;

Taxable Person to reply in **ASMT-03** (normally within **15 days**);

Order for paying tax on provisional basis indicating value or rate or both in **ASMT-04** within **90 days** from the date of receipt of request

Procedure for Provisional Assessment U/S 60

Order shall indicate amount of bond and security to be furnished **not exceeding 25% of amount** covered by bond for binding tax payer to pay differential amount of tax in case of any shortfall after final assessment;



Taxable person shall execute bond in form **ASMT-05** along with a security in the form of a Bank Guarantee;



Final Assessment order to be passed within **6 months** from the date of communication of **ASMT-04**;



Additional information for passing final order shall be asked in **ASMT-06**;

Procedure for Provisional Assessment U/S 60

Final Order in **ASMT-07**;

Period of Final Order **can be extended** on sufficient cause being shown and reason in writing:

By JC and Additional DC – for further **6 months**;

By Commissioner – for further **4 years**;

Applicant to file **ASMT-08** for release of the security after passing of an Final Assessment Order;

Interest will be payable if tax determination is higher in final order from original due date to actual date of payment

Procedure for Provisional Assessment U/S 60

Proper Officer shall release the security through Order in **ASMT-09** once tax, if any, payable has been paid **within 7 days**;



Refund can be filed under Section 54(8) and interest will be paid to taxable person as provided in Section 56;

Procedure for Provisional Assessment U/S 60

- From where **can I file** an application for **Provisional Assessment**?
 - ✓ Navigate to **Services > User Services > My Applications > Provisional Assessment ASMT-01 > NEW APPLICATION** option.
- From where **can I view** filed application for Provisional Assessment?
 - ✓ Navigate to **Services > User Services > My Applications > Provisional Assessment ASMT-01 > SEARCH > Click ARN** option.
- **From where can I view Notice issued for Provisional Assessment?**
 - ✓ Navigate to **Services > User Services > View Additional Notices/ Orders > NOTICES** option
- **From where can I reply to notice issued for Provisional Assessment?**
 - ✓ Navigate to **Services > User Services > View Additional Notices/ Orders > REPLIES** option.

Release of Security given for Provisional Assessment

- After finalization of Provisional Assessment process with the issue of Final Assessment Order, the taxpayer can file an Application for release of Security.
- Tax Official will verify the request and check whether the purpose for which security was furnished has been accomplished.
- If the purpose is not accomplished, an intimation will be sent to the taxpayer that security cannot be released and Order for rejecting the Application will be issued.
- If purpose is accomplished, then Release Order will be issued after seeking Approval of the competent authority and Tax Official will handover the security to the taxpayer.
- **From where tax paper can apply for release of Security for Provisional Assessment?**
- ✓ **Navigate to Services > User Services > My Applications > Provisional Assessment ASMT-01 > SEARCH > SECURITY.**

Provisional Assessment Vs. Advance Ruling

Topic	Provisional Assessment	Advance Ruling
Facility	Optional	Optional
Scope	Limited to Value and Rate of Goods and Services	Wider than Value and Rate of Goods and Services
Where Appropriate	Urgent requirement – like commencement of business or new transaction	One has to wait till order is passed;
Fees	Not prescribed	Mandatory payment with Application
Redressal mechanism	Normal Appellate Process (Appeal, Tribunal, HC, SC)	Appeal to AAAR, Writ in HC

Forms under Provisional Assessment U/S 60 and Rule 98

S.No.	Form	Description
1	GST ASMT-01	Application for provisional assessment under section 60;
2	GST ASMT-02	Notice for seeking additional Information / clarification/ documents for provisional assessment;
3	GST ASMT-03	Reply to the notice seeking additional information;
4	GST ASMT-04	Order of provisional assessment;
5	GST ASMT-05	Furnishing of security;
6	GST ASMT-06	Notice for seeking additional Information/ clarification/ documents for Final assessment;
7	GST ASMT-07	Final assessment order;
8	GST ASMT-08	Application for withdrawal of security;
9	GST ASMT-09	Order for release of security or rejecting the application;



GST Return Scrutiny

Filing of Reply in in Form GST ASMT-11 to the Notice issued for Scrutiny of Returns;

Scrutiny of Returns – Section 61 of CGST Act

(1) The proper officer **may scrutinize the return** and related particulars furnished by the registered person to **verify the correctness of the return** and inform him of **the discrepancies noticed**, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation **is found acceptable**, the registered person shall be informed accordingly and **no further action** shall be taken in this regard.

(3) In case **no satisfactory explanation** is furnished within a **period of thirty days** of being informed by the proper officer or such **further period** as may be permitted by him 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 initiate appropriate action including those under **section 65 or section 66 or section 67**, or proceed to determine the tax and other dues **under section 73 or section 74**.

Scrutiny of Returns – Rule 99 of CGST Rule

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of **section 61** with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, **not exceeding thirty 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.

(2) The registered person **may accept the discrepancy** mentioned in the notice issued under subrule (1), and **pay the tax, interest** and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in **FORM GST ASMT-11** to the proper officer.

Scrutiny of Returns – Rule 99 of CGST Rule

*(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in **FORM GST ASMT-12**.*

Procedure for Scrutiny of Returns U/S 61

Proper Officer may scrutinize the returns and related particulars filed by a registered person to verify the correctness of return;

Proper Officer may issue Discrepancy Notice in **ASMT-10** informing the discrepancies noticed in returns, if any, to seek explanation from the taxpayer;

Taxpayer to reply to the Notice **within 30 days** with satisfactory explanation or **such further period** as may be extended by the Proper Officer;

Taxpayer may accept the discrepancy and pay tax dues, if any, or furnish an explanation in **ASMT-11**;

If reply furnished is satisfactory, then PO shall issue Order in **ASMT-12** and no further action will be taken.

Procedure for Scrutiny of Returns U/S 61

If taxpayer does not furnish a satisfactory **reply within 30 days** of notice or does not take corrective action in his return for that month in which discrepancy is accepted, Proper Officer **may initiate action** including as per following details;

- O Department Audit (Section 65);**
- O Special Audit (Section 66);**
- O Power of Inspection, Search and Seizure (Section 67);**
- O Issue Notice for determination of tax and other dues (Section 73 or 74)**

Salient features of Standard Operating Procedure (SOP) for Scrutiny of Returns for FY 2017-2018 and 2018-2019

- CBIC issued Instruction **No.2/2022-GST** dated **22/03/2022** on Standard Operating Procedure (SOP) for scrutiny of returns for **FY 2017-2018 and 2018-2019**;
- SOP issued **as an interim measure**, till the time a **Scrutiny Module** for online scrutiny of returns is made available on the CBIC-GST application;
- Selection of returns for scrutiny preferably based on **robust risk parameters**;
- Proper Officer to rely upon **various returns furnished and statements** furnished by the registered person and the data / details made available through various sources like Directorate General of Analytics and Risk Management (**DGRAM**), Advanced Analytics in Indirect Taxation (**ADVAIT**), **GSTN, E-Way Bill Portal**, etc.
- **Superintendent of Central Tax** has been assigned the functions as Proper Officer in relation to Section 61(3)(1), as per **Circular No. 3/3/2017-GST** dated **05/07/2017**;
-

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- Selection of returns for scrutiny preferably based on **robust risk parameters**;
- Proper Officer to rely upon **various returns furnished and statements** furnished by the registered person and the data / details made available through various sources like Directorate General of Analytics and Risk Management (**DGRAM**), **ADVAIT**, **GSTN**, **E-Way Bill Portal**, etc.
- **Superintendent of Central Tax** has been assigned the functions as Proper Officer in relation to Section 61(3)(1), as per **Circular No. 3/3/2017-GST** dated **05/07/2017**;

Salient features of Standard Operating Procedure (SOP) for Scrutiny of Returns for FY 2017-2018 and 2018-2019

- Proper Officer to finalize the **scrutiny schedule** with the approval of the Divisional Assistant / Deputy Commissioner;
- Proper Officer shall conduct scrutiny of returns pertaining to minimum 3 GSTINs (**all returns pertaining to a financial year**) per month;
- Proper Officer shall issue notice to the registered person in **FORM GST ASMT-10** (for entire financial year) informing him of discrepancies noticed and seeking his explanation thereto;
- Registered Person may accept the discrepancy mentioned in the notice and pay the tax dues through Form DRC-03 and inform the same or may furnish an explanation for the discrepancy in Form ASMT-11 to the Proper Officer.
- Proper Officer to conclude the proceedings by informing the registered person in Form GST ASMT-12 where explanation or information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the Proper Officer;

Time Limit prescribed U/S 61 and Rule 99 of CGST Rule – Can Rule travel beyond the provisions of Act?

- **Section 61(3) of CGST Act** provide that:
 - ✓ *“in case no satisfactory explanation is furnished **within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him**”*
- **Rule 99 of CGST Rule** provide that:
 - ✓ *“informing him of such discrepancy and seeking his explanation thereto within such time, **not exceeding thirty days** from the date of service of the notice or **such further period as may be permitted by him**”*
- As per above provision under CGST Act, the reply to the Notice U/S 61 has to be furnished **within thirty days or within such time as may be permitted by the Proper Officer.**

Time Limit prescribed U/S 61 and Rule 99 of CGST Rule – Can Rule travel beyond the provisions of Act?

- However, as per provision contained in Rule 99 of CGST Rule, the reply to the Notice U/S 61 has to be furnished **within such time, not exceeding thirty days from the date of the service of the notice or such further period as may be permitted** by the Proper Officer.
- Therefore, provisions under Rule 99 of CGST Rule prescribes an initial period of less than thirty days and may or may not be extended further.
- Thus, provisions under Rule 99 of CGST Rule travel beyond provisions contained in Section 61 of CGST Act.
- Always insist for grant of minimum 30 days time, in compelling circumstances, for giving reply to Notice U/S 60

Filing of Reply in Form GST ASMT-11

- The Notice issued by the Department may indicate some discrepancies which were observed during scrutiny of return;
- If due to any of the indicated discrepancy in the Notice, **taxpayer is liable to pay differential tax**, and he agrees to the discrepancy and pays the tax due on this count, he may mention the said agreed amount paid and enter the payment particulars in its reply to notice in **Form GST ASMT 11**;
- **If he is yet to pay the admitted amount**, he can pay it either by using Form DRC-03 or he may furnish the outward supply Invoice, Debit Note, amended Invoice, amended Debit Note, in **Form GSTR-1** or by paying tax or do ITC reversal, as the case may be, at the time of filing **Form GSTR-3B**, in reply to the Notice.

Forms under Scrutiny of Returns U/S 61 and Rule 99

S.No.	Form	Description
1	GST ASMT-10	Notice for intimating discrepancies in the return after scrutiny;
2	GST ASMT-11	Reply to the notice issued under section 61 intimating discrepancies in the return;
3	GST ASMT-12	Order of acceptance of reply against the notice issued under section 61;



Assessment of Non-filers of Returns (Section 62)

(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 subsection (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.

Section 62 vis-à-vis Section 73 or Section 74

- **Section 62** has got overriding effect over **Section 73 or Section 74**;
- Further **Section 62** has to be read conjointly with **Section 73 or Section 74**;
- Procedures or Mechanisms **U/S 73 or U/S 74**, which are to the extent not contrary to **Section 62** can be followed;
- Period of **3 years** covered **U/S 73** is not applicable to **Section 62** because of specific overriding effect;
- Timeliness for issuance of Notice for **3 months prior or 6 months prior to 3 or 5 years** prescribed **U/S 73 or U/S 74** not applicable to **Section 62**;
- Penalty Mechanism prescribed **U/S 73 or U/S 74** may be followed;

Assessment of Non-filers of Returns (Rule 100)

(1) The order of assessment made under **sub-section (1) of section 62** shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(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 DRC07**.

(3) The order of assessment under **sub-section (1) of section 64** shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07**.

(4) The person referred to in **sub-section (2) of section 64** may file an application for withdrawal of the assessment order in **FORM GST ASMT-17**.

(5) The **order of withdrawal** or, as the case may be, rejection of the application under subsection (2) of section 64 shall be issued in **FORM GST ASMT-18**

Procedure for Assessment of Non-Filers of Returns U/S 62

Registered Person fails to furnish return U/S 39 (e.g. GSTR- 3B) or U/S 45 (e.g. GSTR-10);

Proper Officer serves notice in **Form GSTR-3A** U/S 46 (Rule 68) for filing of return;

Proper Officer performs best judgment assessment if failure continues even after time period of **15 days** allowed U/S 46;

Proper Officer passes Assessment Order (**ASMT-13**) and upload summary thereof (**DRC-07**) within **5 years** from due date for Annual Return U/S 44;

If Registered Person furnishes a valid return **within 30 days** of service of Assessment Order, then order deemed to be withdrawn (**DRC-08 – Rule 142(7)**) else tax liability determined by the Proper Officer to be final.

Key facts – Section 62

- **Section 62** is invocable only for non-filing of return **U/S 39 and U/S 45**.
- Section 39 relates to furnishing of Returns in form **GSTR-3, GSTR-3B, GSTR-4, GSTR-5, GSTR-6 and GSTR-7**.
- **Section 45** relates to furnishing of Final Return in form **GSTR-10**.
- Can proceedings **U/S 62** be initiated against a Registered Person for failure to file **GSTR-1**? **GSTR-1** is a statement which is filed **U/S 37**.
- Can proceedings **U/S 62** be initiated against a Registered Person for failure to file **Annual Return**? Annual return is **filed U/S 44**.
- Can proceedings **U/S 62** be initiated against a Registered Person for failure to file **TCS Return**? TCS return is filed **U/S 52**.
- Before taking action **U/S 62**, a Notice **U/S 46** (Form **GSTR-3A**) needs to be issued **mandatorily**.

Key facts – Section 62 – Contd...

- In case of failure of the taxpayer to file reply to the Notice within time allowed of 15 days, the Department can proceed for **Best Judgment Assessment in Form ASMT-13**.
- Principles of “**Best Judgment Assessment**” U/S 62 are laid down by various High Courts and Supreme Court; Department expected to follow these principles meticulously;
- The Best Judgment Assessment can be issued in **Form ASMT-13** without any further communication – as per SOP issued through **Circular No. 129/48/2019-GST dated 24/12/2019**.

Key facts – Section 62 – Contd...

- For the purpose of assessment of tax liability through Best Judgement Assessment the Proper Officer may take into account the following (**Circular No. 129/48/2019-GST dated 24/12/2019**):
 - ✓ The details of outward supplies available in the statement furnished under **Section 37 - (FORM GSTR-1)**;
 - ✓ Details of supplies auto-populated in **FORM GSTR-2A**;
 - ✓ Information available from E-way bills; OR
 - ✓ Any other information available from any other source, including from inspection under Section 71;
 - ✓ Information available on / in Income Tax Portal / ROC Portal / Bank account / Turnover, etc.

- Can Appeal be filed against Order issued **U/S 62**. **Yes**, as per provisions contained in **Section 107** of CGST Act.

SOP for Non-Filers – Circular no. 129/48/2019-GST dated 24/12/2019

System generated message to the taxpayer - **3 days** before the due date - to remind about filing of return;



System generated mail / message to the taxpayer about non-filing of return after due date is over;



Issuance of Notice **U/S 46 in Form GSTR-3A - 5 days** after due date is over;




If the defaulter fails to file return even after **15 days** of issuance of Notice, PO to resort to Best Judgment Assessment **U/S 62** – issuance of Assessment Order – ASMT-13 and uploading of **DRC-07**;

SOP for Non-Fileers – Circular no. 129/48/2019-GST dated 24/12/2019

Proper Officer to initiate action **U/S 29(2)** for cancellation of registration where return has not been furnished for the period specified **U/S 29**;



Proper Officer to initiate action **U/S 78 and U/S 79** if returns are not filed; If necessary, action to be initiated **U/S 83**;



Withdraw ASTM-13 where returns are filed **within 30 days**;



If the defaulter fails to file return even after **15 days** of issuance of Notice, PO to resort to Best Judgment Assessment U/S 62 – issuance of Assessment Order – **ASMT-13** and uploading of **DRC-07** ;

Key facts – Section 62 – Contd...

- **Can Penalty be imposed U/S 62?**
- Penalty provisions are **not incorporated U/S 62**;
- According to accepted procedure, **penalty can only be imposed** after following the **Principles of Natural Justice**, which includes grant of opportunity of being heard;

- **Questions that arise are:**
 - ✓ Can self-assessed tax lower than best judgment demand?
 - ✓ Can proceedings U/S 73 or U/S 74 directly initiated against non-filers?
 - ✓ Can proceedings U/S 73 or U/S 74 initiated for the same period subsequent to withdrawal of ASMT-13 on filing of returns?
 - ✓ Can proceedings U/S 61 initiated once assessment U/S 62 is withdrawn?



Section 63 of GST Assessment of unregistered persons

GST All Section List

CAknowledge.com

**Taking Actions during Assessment Proceedings
U/S 63 against Unregistered Person;**

Assessment of Unregistered Person – Section 63

- *Notwithstanding anything to the contrary contained in **section 73** or **section 74**, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under **sub-section (2) of section 29** 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 judgment for the relevant tax periods 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;*
- *Provided that no such assessment order shall be passed without giving the **person an opportunity of being heard**;*

Distinction between provisions of Section 61, Section 62 and Section 63

- **Section 61** provides for Assessment on the basis of information available with the Proper Officer;
- **Section 62** provides for Assessment on the basis of information available in addition to the information gathered by the Proper Officer;
- **Section 63** is silent about source of information but assessment to be based on Best Judgement;

Taking action during Assessment proceedings U/S 63 against Unregistered Persons

- Following “**Persons**” will fall under the **category of Unregistered Persons**:
 - ✓ **Taxable Persons** who are not registered under the GST and have not applied for registration under GST Act, but are liable to get registered as per the provisions of the Act;
 - ✓ **Taxable Persons** whose registration has been cancelled due to some reason and they are liable to pay tax;
- The procedure of the **Assessment of Unregistered Persons starts** when a tax officer comes to know, **either during inspection or survey or enforcement or through the information available with intelligence unit or through any other means**, that a Taxable Person has failed to obtain registration or to pay taxes even though he/she is liable to do so;

Procedure of the Assessment Proceedings U/S 63 against Unregistered Persons

- Adjudicating or Assessing Authority(A/A) issues a “**Show Cause Notice**” to the taxpayer;
- If **Personal Hearing** is required, the A/A also schedules a date, time and venue;
- In case of no reply from the taxpayer, A/A **issues a Reminder**;
- **Maximum three reminders** can be issued.
- Taxpayer can reply to the issued notice on the **GST Portal** and also request for a **Personal Hearing** in case A/A has not called for a Personal Hearing in the issued Notice;
- Additionally, if required, he/she can also file for **Application for extension of time**;
- If A/A **approves Application** of extension of time, A/A will issue an Adjournment with the new date, time and venue of **Personal Hearing**, if required;
- **Adjournment** can be allowed **maximum 3 times**;
- If Personal Hearing is not required, the A/A, on the basis of taxpayer’s reply, issues an **Assessment Order (ASMT-15) OR an Order for dropping the further proceedings in the matter**;

Procedure of the Assessment Proceedings U/S 63 against Unregistered Persons

- If **Personal Hearing** is required, the A/A conducts the **Personal Hearing** and on that basis **issue the Assessment Order (ASMT-15)**;
- If **taxpayer does not reply**, even after the **issue of three reminders**, A/A issues the **Order based on documents, information and facts available on record**;
- Generally, **15 days' of time** is given for furnishing a reply to the SCN;
- Taxable Persons will normally receive **two documents**, viz. **Show Cause Notice (SCN) in Form GST ASMT- 14**, which is normally generated thru the GST Portal, and the **Annexure, giving detailed reasons for issuance of the SCN**;
- Taxable Person can view the issued Notices and Order from the following navigation: **Services > User Services > View Additional Notices/Orders**;
- In the case of unregistered Persons, the SCN and subsequent communications including Order will be served through SMS, post, courier, special messenger, etc., **in which case date of delivery will be treated as Date of Issue of the SCN**.

Forms under Scrutiny of Returns U/S 62 and U/S 63, Rule 100

S.No.	Form	Description
1	GST ASMT-13	Assessment order u/s 62;
2	GST ASMT-14	Show cause notice for assessment u/s 63;
3	GST ASMT-15	Assessment order u/s 63;



Summary Assessment in Certain Special Cases – Filing Application for Withdrawal of Summary Assessment Order

Summary Assessment in certain special cases

- Section 64


(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** .*

Procedure for Summary Assessment – Section 64

To protect the interest of revenue, in cases where the Proper Officer has evidence that a **Taxable Person** has incurred a liability to pay tax under the Act and Proper Officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue;



Proper Officer may issue an Assessment Order imposing tax liability on a person based on any evidence showing a tax liability; If person to whom liability pertains is not ascertainable, the person in charge of goods shall be assessed;



If the order is erroneous, Proper Officer may withdraw such order and follow the procedure laid down in **Section 73 or Section 74**;

Key facts – Assessment U/S 64

- No Requirement to Issue Notice for the purpose of making assessment U/S 64;
- Assessment under section 64 has to be completed without issue of notice;
- **The assessing officer has to fulfill following conditions before moving ahead and completing assessment under this section;**
 - ✓ **Evidence showing tax liability** of a person should have come to his notice;
 - ✓ Evidence can be understood in reference to definition provided in **Section 3 of Indian Evidence Act**;
 - ✓ There should be previous approval from the **Additional Commissioner or Joint Commissioner** before proceeding to assess the liability of a person under section 64;
 - ✓ The assessment should to protect the **interest of revenue**.
 - ✓ The proper officer should have **sufficient grounds to believe** that **any delay in doing so** may adversely **affect the interest of revenue**.

Filing of Application for withdrawal of Summary Assessment Order

- The taxpayer can file an Application for withdrawal of the issued order **within 30 days** of the communication of Order for creation of demand and send it to AC/JC on the GST Portal;
- On receiving the withdrawal application, **AC/JC can take following actions:**
 - ✓ Accept the Application and issue “**ACCEPTANCE OR REJECTION OF APPLICATION FILED U/S 64(2) – ASMT-18**” and recommend it for proceedings to be initiated u/s 73 /74 for **determination of tax**.
 - ✓ Reject the application and issue “**ACCEPTANCE OR REJECTION OF APPLICATION FILED U/S 64(2) – ASMT-18**” confirming the Order for creation of demand and adjudicating the matter.

Forms related to Summary Assessment U/S 64 CGST Act – as per Rule 100 of CGST Rules

Form	Particulars
ASMT-16	Order of Assessment;
DRC-07	Summary of Order shall be uploaded electronically;
ASMT-17	Application for Withdrawal of the Assessment Order
ASMT-18	Order of Withdrawal or Rejection of the Application (substituted through Notification No.16/2019-CT dated 29/03/2019 effective from 01/04/2019)



Types of Notices under Assessment Provisions

General Provisions relating to determination of Tax

Ingredients of a valid SCN and OIO

Types of Notices under Assessment Provisions

S. No.	Form	Description	Reply or Action to be taken	Time-limit	Consequences of non-response
1	GSTR-3A	Default Notice to non-filers of GST returns;	File the pending Returns and discharge tax liability along with interest and late fee, if any;	15 days from the date of receiving the Notice;	Tax is assessed to the Best Judgement using information available with the Department. Penalty applicable: Rs.10,000-00 or 10% of tax dues, whichever is higher;
2	ASMT-02	Notice seeking additional information to Provisional Assessment;	Reply to be submitted in ASMT-03 along with relevant documents;	15 days from the date of service of the Notice;	Application for Provisional Assessment may be rejected;
3	ASMT-06	Notice seeking additional information to Final Assessment;	Reply to be submitted along with relevant documents;	15 days from the date of service of the Notice;	Final Assessment Order may be passed without considering the views of taxpayer.

Types of Notices under Assessment Provisions

S. No.	Form	Description	Reply or Action to be taken	Time-limit	Consequences of non-response
4	ASMT-10	Notice for intimating discrepancies in the GST return after scrutiny;	Reply to be submitted in ASMT-11 giving reasons for discrepancies in the GST returns;	Maximum time of 30 days from the date of service of the Notice or such deadline as granted by the PO;	PO may proceed to assess the taxpayer based on available information – may lead to prosecution and penalty;
5	ASMT-14	Reasons for conducting the Assessment on Best Judgement basis;	Reply to be submitted along with relevant documents and appear before PO;	15 days from the date of service of the Notice;	PO may issue Assessment Order which may not be favourable to taxpayer;

General Provisions relating to determination of tax

- **Section 73** - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized **for any reason other than fraud or any wilful misstatement or suppression of facts;**
 - **Section 74** - Determination of tax not paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or **utilized by reason of fraud, or any willful-misstatement or suppression of facts;**
 - **Section 75(4)** - An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, **or where any adverse decision is contemplated against such person;**
 - **Section 75(5)** - The proper officer shall, if sufficient cause is shown by the person chargeable with tax, **grant time to the said person and adjourn the hearing** for reasons to be recorded in writing:
- ✓ Provided that **no such adjournment shall be granted for more than three times** to a person during the proceedings;

General Provisions relating to determination of tax

- **Section 75 (6)** - The proper officer, in his order, **shall set out the relevant facts and the basis of his decision;**
- **Section 75 (7)** - The amount of tax, interest and penalty demanded in the order shall **not be in excess of the amount specified in the notice** and **no demand shall be confirmed on the grounds other than the ground specified in the notice;**
- **Section 160 - Assessment proceedings, etc., not to be invalid on certain grounds:**
 - ✓ (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 any mistake, defect or omission**. If these are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

General Provisions relating to determination of tax

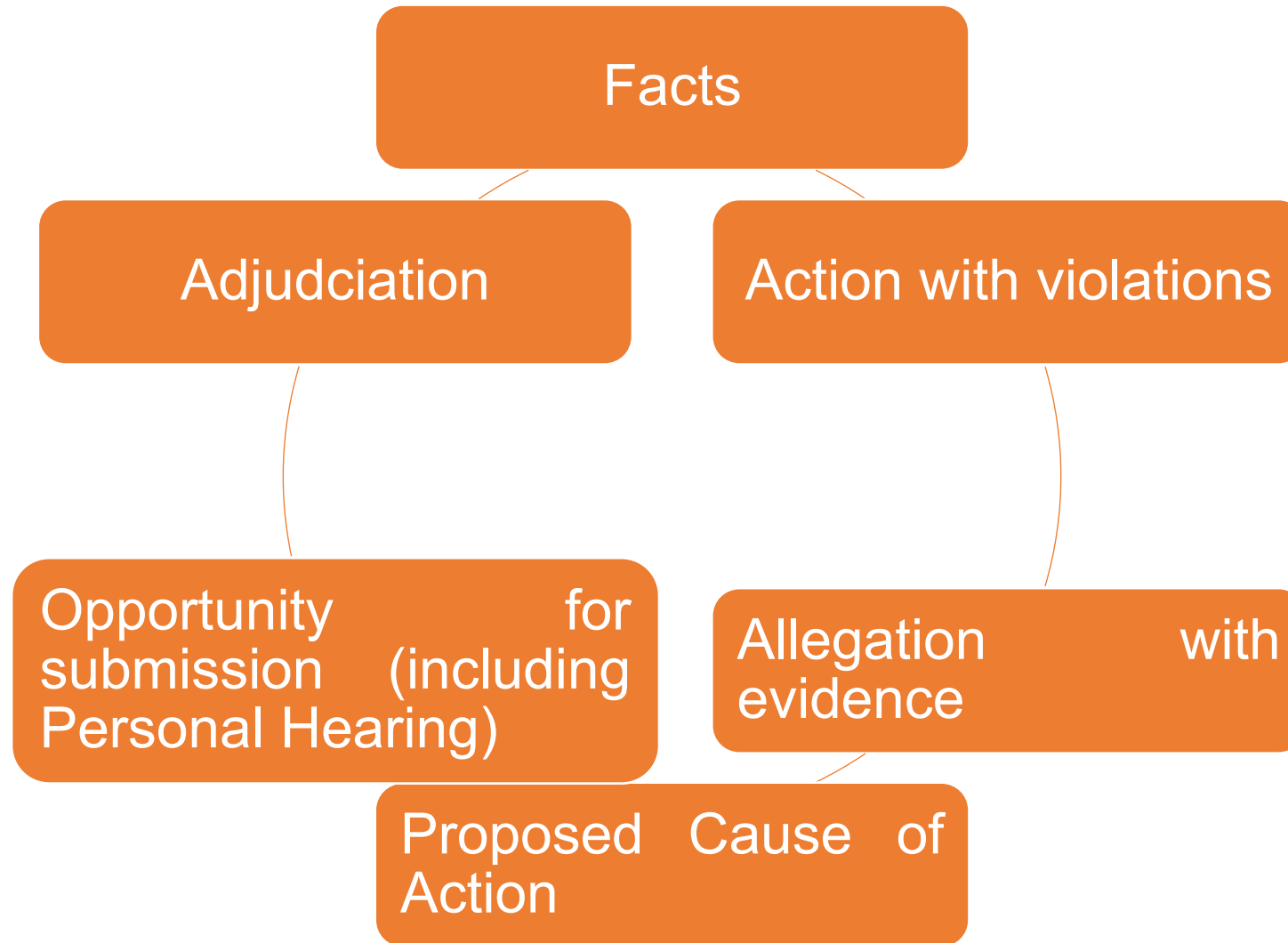
- **Section 160 - Assessment proceedings, etc., not to be invalid on certain grounds:**
- ✓ (2) The **service of any notice, order or communication** shall not be called in question, if the **notice, order or communication**, as the case may be, has already been acted upon **by the person to whom it 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.

General Provisions relating to determination of tax

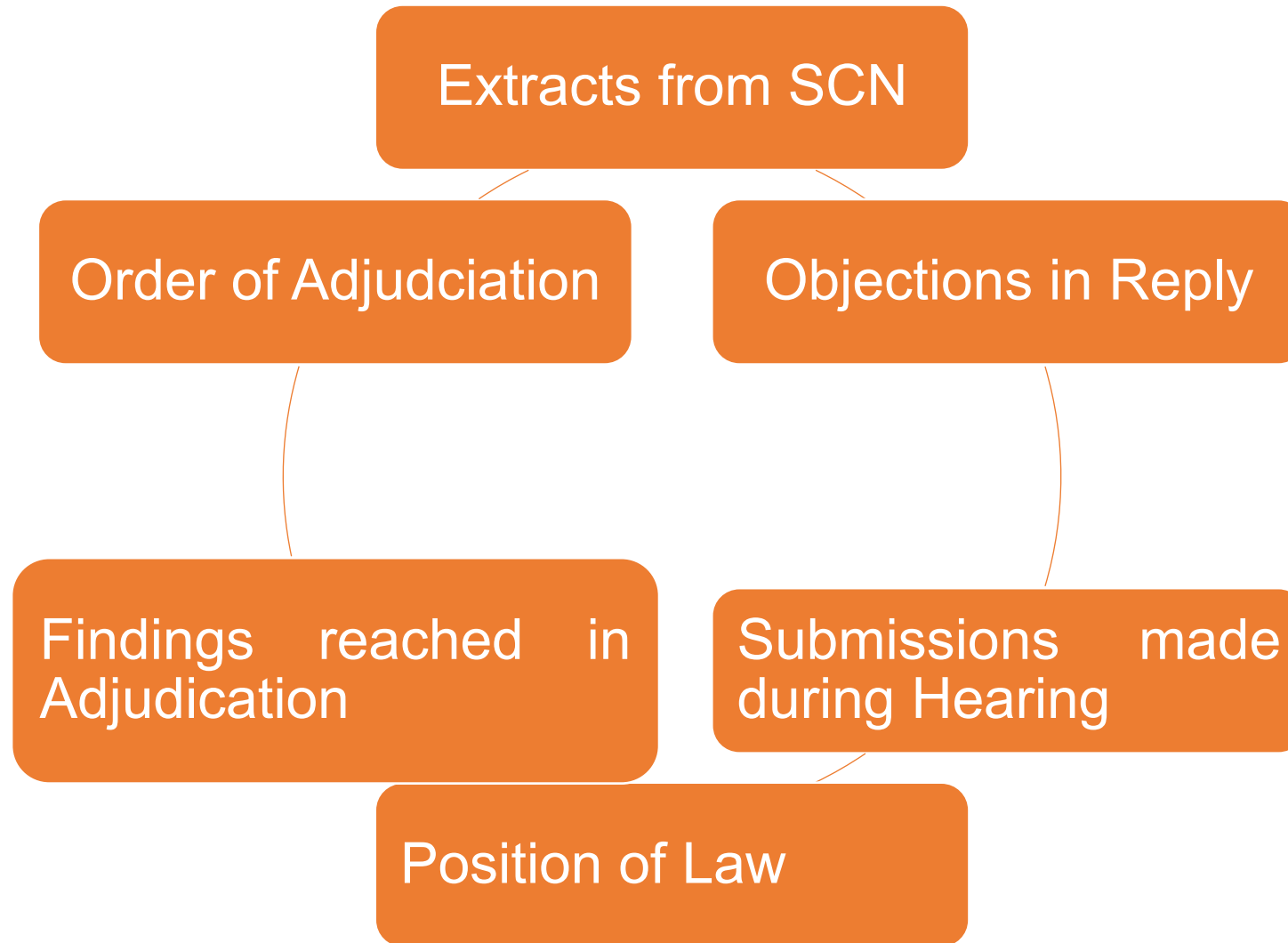
➤ **Section 169:- Service of notice in certain circumstances:**

- ✓ **Any decision, order, summons, notice or other communication shall be served by any one of the following methods:**
- ✓ Tendering it directly or by a messenger including a courier;
- ✓ By registered post or speed post or courier with acknowledgement due;
- ✓ By sending a communication to his e-mail address provided at the time of registration or as amended from time to time;
- ✓ By making it available on the common portal;
- ✓ By publishing in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided;
- ✓ By affixing it in some conspicuous place at his last known place of business or residence or by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice;

Ingredients of a valid Show Cause Notice



Ingredients of a valid Order in Original





Filing of Reply in Form GST DRC-06 against Determination of Tax proceedings initiated U/S 73 and U/S 74

Forms relating to Determination of Tax U/S 73 and U/S 74, Rule 142

S. No.	Form	Description
1	GST DRC 1	Summary of show cause notice
2	GST DRC 1A	Intimation of tax ascertained as being payable under section 73(5)/74(5)
3	GST DRC 2	Summary of Statement
4	GST DRC 3	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement.
5	GST DRC 4	Acknowledgement of acceptance of payment made voluntarily
6	GST DRC 5	Intimation of conclusion of proceedings
7	GST DRC 6	Reply to the show cause notice
8	GST DRC 7	Summary of the order
9	GST DRC 8	Summary of Rectification/ Withdrawal order

Filing of Reply in Form DRC-06 against Proceedings initiated by Tax Officer U/S 73 and 74 related to Determination of Tax

- **Section 73** covers determination of tax not paid or short paid or erroneously refunded or ITC availed wrongly or utilized for **any reason other than fraud, willful misstatement or suppression of facts**;
- **Section 74** covers determination of tax not paid or short paid or erroneously refunded or ITC availed wrongly or utilized **by reason of fraud, willful misstatement or suppression of facts**;
- **Few reasons for initiating Assessment/Adjudication proceedings U/S 73 and U/S 74 are:**
 - ✓ Where the taxpayer has violated the conditions prescribed for availing composition scheme;
 - ✓ Where the ISD has distributed excess credit or distributed credit in contravention of the provisions of the Act;

Filing of Reply in Form DRC-06 against Proceedings initiated by Tax Officer U/S 73 and 74 related to Determination of Tax

➤ Few reasons for initiating Assessment/Adjudication proceedings U/S 73 and U/S 74 are:

- ✓ Where the Tax Deductor fails to comply with the TDS provisions mentioned in section 51;
- ✓ Where the taxpayer fails to comply with the Notice issued U/S 61 or explanation given is not found satisfactory after the scrutiny of returns;
- ✓ Where the summary assessment framed u/s 64 has been withdrawn by Additional/Joint Commissioner either Suo moto or on Application;
- ✓ Where a case is recommended based on the Audit conducted u/s 65;
- ✓ Where a case is recommended by Special Audit conducted u/s 66;
- ✓ Where a case is recommended based on the survey conducted u/s 67;
- ✓ Where there are other cases of tax not paid/short paid/erroneously refunded/ITC wrongly availed or utilized;

General Procedure for conducting Assessment / Adjudication proceedings U/S 73 and U/S 74

- General procedure of conducting Assessment/Adjudication proceedings U/S 73 and U/S 74 is:
 - ✓ Notice shall be issued to the taxpayer for furnishing reply to Show Cause Notice;
 - ✓ In case the tax official has called for a Personal Hearing in the Notice, the date, time and venue of the Personal Hearing will also be provided there;
 - ✓ If reply to Notice furnished by the Taxable Person within time specified or extended period is satisfactory, then “Drop Proceeding Order” will be issued;
 - ✓ If reply to Notice furnished by the Taxable Person within time specified or extended period is not satisfactory, then Officer can issue “Assessment Order U/S 73 or U/S 74 within specified period;



Filing of Reply in Form GST DRC-06 against Determination of Tax proceedings initiated for Tax Collected but not Deposited with Government

Tax Collected but not paid to Government – Section 76

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, **every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government**, irrespective of whether the supplies in respect of which **such amount was collected are taxable or not.**

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may **serve on the person liable to pay such amount a notice** requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and **why a penalty equivalent to the amount specified** in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), **determine the amount due from such person and thereupon such person shall pay the amount so determined.**

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) **also be liable to pay interest** thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) **An opportunity of hearing** shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

Tax Collected but not paid to Government – Section 76

(6) The proper officer shall issue an order **within one year from the date of issue** of the notice.

(7) Where the issuance of **order is stayed by an order of the court or Appellate Tribunal**, the period of such stay **shall be excluded**.

(8) The proper officer, in his order, shall set out the **relevant facts and the basis of his decision**.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall **be adjusted against the tax payable, if any**, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall **either be credited to the Fund or refunded to the person** who has **borne the incidence of such amount**.

(11) The person who has borne the incidence of the amount, **may apply for the refund of the same** in accordance with the provisions of **section 54**.

Tax Collected but not paid to Government – Rule 142

(1) The proper officer shall serve, along with the

(a) Notice issued under section 52 or section 73 or section 74 or **section 76** or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 , **a summary thereof electronically in FORM GST DRC-01.**

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or **sub-section (3) of section 76** or the reply to any Notice issued under any section whose summary has been uploaded electronically **in FORM GST DRC-01** under sub-rule (1) **shall be furnished in FORM GST DRC-06.**

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or **section 76** or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

Forms related to Tax collected but not paid to the Government U/S 76 CGST Act – as per Rule 100 of CGST Rules

Form	Particulars
DRC-01	Summary of Show Cause Notice;
DRC-06	Reply to the Show Cause Notice
DRC-07	Summary of the Order shall be uploaded electronically;



Filing of Reply for proceedings initiated for Remanded Cases

Filing Reply for proceedings initiated for Remand Cases

- **Remanded Cases** are those cases that are initiated by the **Assessment and Adjudicating Authority or Appellate Authority (A/A)**, in compliance to the “**Remand Instructions**” issued by the Appellate Tribunal, High Court or Supreme Court, in the appeal filed by taxpayer against an Assessment Order or Appeal Order;
- **Once Order is issued against a remanded ARN / Case ID U/S 73, 74 or 76, following actions take place on GST Portal:**
 - ✓ ARN/Case ID Status is updated to “**Order issued against remanded cases**”;
 - ✓ Intimation of the issue of the Order is sent to the concerned taxpayer **via his/her email ids and SMS**;
 - ✓ Dashboard of Taxpayer is updated with the record of the issued Order and **Form GST-DRC-07**;
 - ✓ Taxpayer can view the issued Order and Form **GST-DRC-07** from the following navigation: **Services > User Services > View Additional Notices/Orders > View > Case Details**;

Filing Reply for proceedings initiated for Remand Cases

- **Electronic Liability Register and Demand & Collection Register (DCR)** will be updated with the **new order issued by A/A** (as amended/ modified through order issued in remand back cases and summary of the order in **Form GST DRC-07**);
- **Original demand** will be **nullified** at the time of **issuance of order in remand back cases**. Tax Officer can also **nullify the demand** through "**Quash Existing Demand**" functionality before issuing this order;
- **New demand ID** will be created as per ID master data (**which will be order reference no.**);
- **Electronic Liability Register** of the taxpayer will also get updated with the demand specified in the order i.e. with **new demand created** (new order ref. no.);
- **Mostly similar procedure is prescribed once the Order is issued against a remanded ARN / Case ID other than the ones U/S 73, 74 or 76, following actions take place on GST Portal:**



Filing of Reply for General Penalty Proceedings U/S 125

Filing Reply for general penalty proceedings U/S 125

- **Any person**, who **contravenes any of the provisions of this Act or any rules** made thereunder for which **no penalty is separately provided for** in this Act, shall be liable to a penalty which may **extend to twenty-five thousand rupees**;
- **General Penalty** can be imposed under **Section 125** on a taxable person, when he/she **contravenes any provisions** of the CGST/ SGST Act or any rules made thereunder, for **which no penalty is separately provided for in the Act**.
- Normally, **penalties not related to tax deficiency** can be covered under General Penalty.
- General penalty can be imposed on any person—**Registered or Unregistered**—who had committed **offence/contravened provisions** of the CGST/SGST Act, for which no penalty is provided under **any other section specifically in the Act**.
- In case penalty is levied **under any other section for some default**, then **no penalty** can be imposed **U/S 125 for the same default on the same person**.

Procedure of the General Penalty Proceedings U/S 125

- Adjudicating or Assessing Authority(A/A) issues a “**Show Cause Notice**” to the taxpayer;
- If **Personal Hearing** is required, the A/A also schedules a date, time and venue;
- In case of no reply from the taxpayer, A/A **issues a Reminder**;
- **Maximum three reminders** can be issued.
- Taxpayer can reply to the issued notice on the **GST Portal** and also request for a **Personal Hearing** in case A/A has not called for a Personal Hearing in the issued Notice;
- Additionally, if required, he/she can also file for **Application for extension of time**;
- If A/A **approves Application** of extension of time, A/A will issue an Adjournment with the new date, time and venue of **Personal Hearing**, if required;
- **Adjournment** can be allowed **maximum 3 times**;
- If Personal Hearing is not required, the A/A, on the basis of taxpayer’s reply, issues an **Order for levying the General Penalty U/S 125 OR an Order for dropping the further proceedings in the matter**;

Procedure of the General Penalty Proceedings U/S 125

- If **Personal Hearing** is required, the A/A conducts the **Personal Hearing** and on that basis **issue the Order**;
- If **taxpayer does not reply**, even after the **issue of three reminders**, A/A issues the Order **based on documents, information and facts available on record**;
- Generally, **15 days' of time** is given for furnishing a reply to the SCN;
- Taxpayer can view the SCN issued to them, after logging into the GST portal and after navigating to **Services>User Services>View Additional Notices and Orders option**;

Forms related to General Penalty U/S 125 CGST Act – as per Rule 142 of CGST Rules

Form	Particulars
DRC-01	Summary of Show Cause Notice;
DRC-07	Summary of the Order shall be uploaded electronically;



Q.1

 are the circumstances under which the Taxable Person may request to the Proper Officer for payment of tax on provision basis U/S 60 of CGST Act?

- A. the taxable person is unable to determine the value of goods or determine the rate of tax applicable thereto;
- B. the taxable person is unable to determine the value of goods or services or determine the rate of tax applicable thereto;
- C. the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto;
- D. the taxable person is unable to determine the value of goods or services;

Answer:- C

Q.2

The Proper Officer shall pass an Order of Provisional Assessment U/S 60 of CGST Act within a period not later than _____ from the date of receipt of such request?

- A. 30 days;
- B. 60 days;
- C. 90 days;
- D. 120 days;

Answer:- C

Q.3

As per provisions related to Provisional Assessment U/S 60 of CGST Act read with Rule 98 of CGST Rules, the a taxpayer needs to submit security for an amount not exceeding _____ of _____?

- A. 50%; Bond amount;
- B. 25%; Bond amount;
- C. 25%; amount of tax liability as determined by the Proper Officer;
- D. 30%; amount of tax liability as determined by the Proper Officer;

Answer:- C

Q.4

The period (time limit) specified under Section 60(3) for finalization of Provisional Assessment by the Proper Officer may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Commissioner for such further period not exceeding _____?

- A. 6 months;
- B. 1 Year;
- C. 2 Years;
- D. 4 Years;

Answer:- D

Q.5

As per provisions contained in Section 62(2) of CGST Act relating to Assessment of non-filers of returns, where the registered person furnishes a valid return within _____ of the service of the assessment order, the Assessment Order issued by the Proper Officer U/S 62(1) shall be deemed to have been withdrawn?

- A. 15 days;
- B. 30 days;
- C. 45 days;
- D. 60 days;

Answer:- B



Thank You for Your Attention!!!
Any Questions?????

