

Duties and Responsibility of Auditor and Assessee during Assessment

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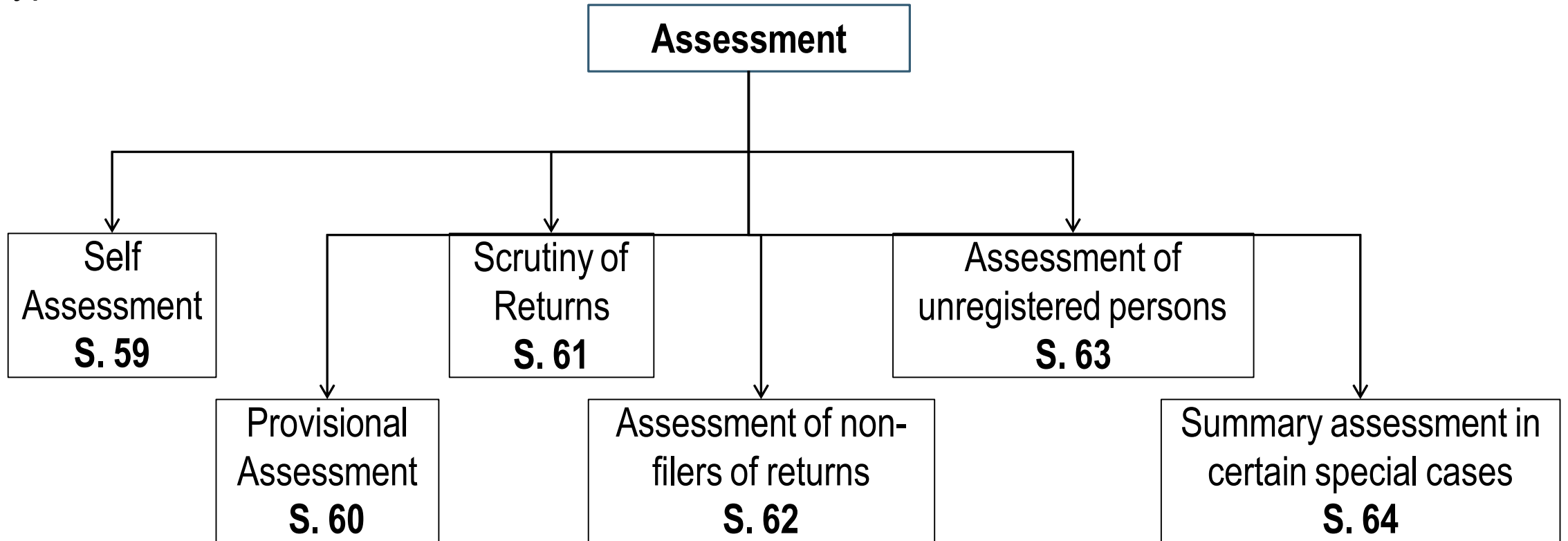
ACA, ACMA, FCS, LLB, DISA (ICAI)

Assessments in GST Regime

ASSESSMENT : MEANING AND TYPES

❖ Assessment means determination of correct tax liability.

❖ Types of Assessment:



SELF ASSESSMENT – SEC 59

- ☐ Every Registered taxable person;
- ☐ Himself assesses the tax payable;
- ☐ Furnish the return for each tax period.

PROVISIONAL ASSESSMENT – SEC 60

- ✓ Unable to determine value and/or rate of tax;
- ✓ Request may be made in writing giving proper reasons to the proper officer for payment of tax on provisional basis;
- ✓ Officer may pass an order granting permission to pay tax on provisional basis within 90 days of receipt of request;
- ✓ Execution of a bond in such form as may be prescribed, & with such surety or security as proper officer may deem fit ;
- ✓ Final assessment to take place within six months from date of communication of order granting permission; further extendable by 6months or 4 years as the case may be;
- ✓ The balance payable or refund due to be settled along with interest.

SCRUTINY OF RETURNS – SEC 61

- ❑ Proper Officer may scrutinize the returns & other related particulars furnished by the registered person to verify the correctness;
- ❑ Discrepancies, if any noticed to be intimated to the registered person & seek his explanation;
- ❑ On submission of acceptable explanation within 30 days: **No further action required;**
- ❑ Unsatisfactory explanation within 30 days: **Appropriate action may be initiated.**

BEST JUDGEMENT ASSESSMENT – SEC 62

- ☐ Also called Assessment for Non-filers of Returns;
- ☐ Notwithstanding Section 73 or 74;
- ☐ Where, registered person fails to furnish returns, **even after service of notice**;
- ☐ Proper Officer based on the information available to the best of his judgment may **proceed to assess the tax liability**;
- ☐ Issue an **assessment order within 5 years** from due date of annual return for the FY to which tax not paid relates;
- ☐ On filing of return within 30 days of receipt of assessment order:
 - ☐ Best Judgment order shall be **deemed to have been withdrawn**;
 - ☐ interest and late fees payable as applicable.

ASSESSMENT OF UNREGISTERED PERSON – SEC 63

- ✓ Notwithstanding Section 73 or Section 74;
- ✓ Taxable person fails to take registration or whose registration has been cancelled but was liable to pay tax;
- ✓ Proper Officer may assess the tax liability to the best of his judgment;
- ✓ Pass the **assessment order within 5 years** from the due date for filing annual return to which the tax period relates.
- ✓ No such order can be passed **without giving opportunity of personal hearing**;

SUMMARY ASSESSMENT – SEC 64

- ❖ Proper Officer, on evidence showing tax liability of a person;
- ❖ With due permission of Addl./ Joint Commissioner;
- ❖ May proceed to assess the tax liability of such person to protect the interest of revenue;
- ❖ Pass an assessment order;
- ❖ Where taxable person is not ascertainable & such liability pertains to supply of goods, person in-charge of goods shall be deemed to be taxable person;
- ❖ On application within 30 days from receipt of order, if the order is erroneous; Addl./Joint Commissioner may withdraw such order & follow procedure under Section 73 or Section 74.

Scrutiny of Returns – Notice Issued – Sec 61

Tax period: APR 2019 - MAR 2020

F.Y.: 2019-2020

Type of Return: GSTR-3B

Act/ Rules Provisions :

as per rule 61

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, discrepancies noticed have been mentioned in the attached annexure..

You are hereby directed to explain the reasons for the aforesaid discrepancies by the date mentioned in the table below.

If no explanation is received by the said date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Sr. No.	Description	Particulars
1	Section under which notice is issued	61
2	Date by which reply has to be submitted	22/03/2021
3	Date of personal hearing	NA
4	Time of personal hearing	NA
5	Venue where personal hearing will be held	NA

F.NO. W-09/2020-21/

Date:-19/02/2021

To,

GSTN :- [REDACTED]

Trade name:- [REDACTED] PRIVATE LIMITED

Tax Period :- 2019-20

Notice for intimating discrepancies in the return after scrutiny

This is to inform you that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:- **Mismatch in liability Declared in GSTR-3B and GSTR-2A F.Y.(2019-20)**

GSTR3B Details (ITC Detail)	F.Y.
0.31 lac.	2019-20

GSTR-2ADetails	F.Y.
163.72999999999999 lac	2019-20

DIFFERENCE IN ITC (GSTR3B-GSTR-1)	FINCIAL YEAR
-163.42 lac.	2019-20

You are hereby directed to pay the differential tax with interest or explain the reasons for the aforesaid discrepancies by 15/03/2021.

If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Scrutiny of Returns – Format of Reply

Form GST ASMT - 11

[See rule 99(2)]

Reply to the notice issued under section 61 intimating discrepancies in the return

1. GSTIN		
2. Name		
3. Details of the notice	Reference No.	Date
4. Tax Period		
5. Reply to the discrepancies		
Sr. No.	Discrepancy	Reply

6. Amount admitted and paid, if any -

Act	Tax	Interest	Others	Total

7. Verification-

I _____ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Scrutiny of Returns – Draft Reply

Form GST ASMT – 11

[See Rule 99(2)]

Reply to the notice issued under Section 61 intimating discrepancies in the return



1. GSTIN	XXXX	
2. Name	XXXX PRIVATE LIMITED	
3. Details of Notice	Reference No - ZD070221023447S	Date 22/02/2021
4. Tax Period	2019-2020	
5. Reply to the Discrepancies	Reply to notice attached	
Sr. No	Discrepancy	Reply
		Attached as annexure



6. Amount Admitted and Paid, if any

Act	Tax	Interest	Others	Total
CGST Act, 2017	NIL	NIL	NIL	NIL

Sales Tax Officer Class II /AVATO

Jurisdiction: Ward 9 , Zone 2 , Delhi

Department of Trade and Taxes, Govt. of NCT of Delhi

11th Floor, Ward No. 09, Vyapar Bhawan, I.P. Estate,

New Delhi – 110002

Dear Sir,

Sub: Reply to the notice issued u/s 61 intimating discrepancies in the return

Ref: ZD070221023447S dated 22/01/2021

GSTIN: XXX / Name: XXXX PRIVATE LIMITED

Refer to your aforesaid notice, we would like to bring to your notice that, among other goods/ Services we also deal in printed books which is chargeable to NIL rate of GST.

A Notice for intimating discrepancies in the return after scrutiny in Form GSTR 3B for FY 2019-20 has been issued to us in Form GST ASMT 10 wherein below discrepancy has been issued –

Sr. No	Form	ITC Details (in Rs Lacs)
1	ITC availed in GSTR 3B	0.31
2	ITC auto populated in GSTR 2A	163.73
	Difference	-163.42

We have availed ITC only on the taxable outward supplies made by us and remaining ITC attributable to NIL Rated outward supplies has not been availed by us.

You may kindly appreciate that the availed ITC in GSTR 3B is much lower to the auto-populated ITC as appearing in GSTR 2A for the FY 2019-20 i.e. period covered under notice, hence the issue of reversal may not arise in our case.

Please treat this as part of the reply as an annexure of Form GST ASMT 11 and oblige up.

Duties and Responsibility of Assessee

- ❖ Self assess and pay correct taxes, interest and late fees
- ❖ Furnish all returns on time
- ❖ Promptly furnish details and provide explanation to the queries raised
- ❖ Obtain assistance of professional
- ❖ Present true and correct details during assessment
- ❖ Allow the officers inspection to premises, books, records
- ❖ Appear before authorities on designated date and time
- ❖ Right to represent through oral or written submission
- ❖ Right to represent before proper forum

Duties and Responsibility of Officer

- ❖ Be impartial
- ❖ Provide opportunity of being heard
- ❖ Correctly assess and seek details of taxes, interest, late fees paid
- ❖ Obtain information and take on record information and details provided
- ❖ Provide reasons for his assessment
- ❖ Fair and transparent in conduct of proceedings
- ❖ Promptly assesses the proceeding in hand
- ❖ Allow adjournments and deferments in proceedings as sought by assessee
- ❖ Right to inspect and visit the premises

Key Risk Areas -

- Nature of Supply – Taxable and Exempt – Treatment in Returns
- Mixed and Composite Supply
- Applicability of Rule 42 and 43
- Errors in Returns and subsequent rectification (interest payment)
- Salary/ Reimbursement/ Payments to Directors
- RCM on Imports as well as Ocean Freight
- Capex and Treatment of ITC on Capex
- Transactions with group companies and Valuation thereof
- Documentation – Invoice, DN/CN, Delivery challan formats
- Time and Place of Supply issues
- Treatment of Advance on Goods and Services
- RCM entries in ERP and Liability generation for RCM
- Foreign Currency transactions – Expenditure and Receipts
- Receipts for Exports of Goods and Services
- Bad Debts written off
- Liabilities Written Back – no Payment to Suppliers – Treatment of ITC
- Remarks in Audit Report, Income tax Audit Report and Transfer Pricing Audit Report
- Data gathered from Audit of third party entities
- Latest Supreme Court and High Court Rulings impacting business of the Auditee
- Any Advance Ruling obtained by Auditee and compliance thereof

Common Errors leading to Assessment

❖ Errors of Classification –

- ✓ Classification of goods as a service (and vice versa) or classification of item under one chapter heading into another leading into incorrect rates of GST discharged, wrong exemption claimed, wrong determination of time of supply

Example- classifying outdoor catering as food and beverages, which would result in differential GST, rate of 13% (since outdoor catering is liable for 18%, whereas food is liable for 5%). Furthermore, ITC would be available for an outdoor caterer but the same is restricted for restaurants

- ✓ 2. The wrong classification of bundled services also proves fatal, mainly because of the continuity of such transactions. A mixed supply wrongly classified as composite supply (and vice versa), would generally result in excess/short discharge of GST.

For example, applying different rates of GST on goods and transportation charges would mean a violation of composite supply provision requires to charge full GST on the rate of goods.

Common Errors leading to Assessment

❖ Errors of Classification –

- ✓ Raising of tax invoice as supply of goods instead of supply of services for job work activity performed on principal's goods.
- ✓ GTO services classified under GTA, and considered for reverse charge outward liability.
- ✓ Classifying EOU transactions or other deemed export transactions as zero-rated supply under GST.

Common Errors leading to Assessment

❖ ERRORS IN TAXABILITY:

They occur due to incorrect determination of levy of GST or incorrect interpretation of exemptions.

- ✓ In case of an item of supply that was exempt under earlier regime but taxable under GST regime, the assessee might continue to treat the same as exempt resulting in erroneous exemption.
- ✓ If goods/ service are absolutely exempt, but assessee opts to pay GST on the same for the purpose of claiming ITC, such ITC availment could be denied as there was absolute exemption from payment of GST.

Example - Charging GST on electricity in order to avoid reversal of common ITC under rule 42 and rule 43.

Common Errors leading to Assessment

❖ INCORRECT DETERMINATION OF PLACE OF SUPPLY:

- ✓ Wrong place of supply would result in paying wrong type of taxes or paying taxes when there is no levy of GST.
- ✓ Wrong discharge of GST (under RCM) without ascertaining place of supply. This could have negative impact on profitability if the payer is not eligible for full ITC.

Example - In case of services from overseas vendors. Further, the department may also dispute such ITC stating that the same to be wrongly paid.

Common Errors leading to Assessment

❖ ERRORS IN TIME OF SUPPLY:

These errors usually result in early/late discharge of GST or in excess/short discharge of GST, in case of change in GST rate.

- ✓ Early /delayed payment of GST due to non-compliance of time of supply provisions.
- ✓ Excess/short payment of GST on account of non-compliance with time of supply pertaining to change in rate of tax.
- ✓ Taxability on provisions made where the supplier of service is location outside taxable territory and the supplier and recipient are associated enterprises.

Common Errors leading to Assessment

❖ **ERRORS IN VALUATION: -**

- ❖ They would result in GST short-paid or excess discharged.
- ✓ Claiming pure agent deduction without satisfying the necessary conditions prescribed (rule 33).
- ✓ Wrongly claimed deduction on post sale discounts (without compliance of section 15(3) (b)).
- ✓ Non-monetary consideration ignored (rule 27) for valuation purpose.
- ✓ GST not discharged on Interest/penalty collected for delayed payments

Common Errors leading to Assessment

❖ ERRORS IN ITC & PAYMENT OF TAX

These errors result in wrong or excess availment of ITC payment of tax.

- ✓ ITC availed on photocopy of invoices without having the original invoice.
- ✓ ITC availed without receipt of goods merely based on invoice.
- ✓ Non-remittance of statutory dues (i.e. GST) to government after collecting from customers. Invocation of demand u/s 74 leads to denial of credit to customer and could hamper the reputation of the company.
- ✓ Non-reversal of ITC along with interest in cases where payment is not made to supplier within 180 days from invoice date (or) not availing credit reversed after making payment to vendor.
- ✓ ITC wrongly availed on restricted supplies u/s 17(5).
- ✓ Non-availment of input tax credit on bank charges, vehicle insurance, asset insurance and telephone bills.
- ✓ Wrong reversal of ITC on warranty replacements (which forms part of cost of the product).

Reconciliations to be prepared -

□ *Reconciliation between books of account and GST records:*

- Turnover reconciliation (Turnover reported in the books of account vis-a-vis turnover as per GST records. Reference could be made to Part-II of Form GSTR 9C)
- Reconciliation of Turnover as per Consolidated financial statement with Turnover computed for each state for GSTR-9C.
- Input Tax Credit Reconciliation (ITC as per books of account vis- à-vis ITC taken in the GSTR-3B/electronic credit ledger)
- Reconciliation of tax payable as per books of account and GST records (tax payable as per GSTR-3B or tax liability appearing in the electronics liability register)
- Reconciliation of expenses liable to reverse charge as per books of account and GST Returns/records

Reconciliations to be prepared -

□ *Reconciliation between books of account and GST records:*

- Reconciliation of taxes paid as per books of account viz a viz taxed paid through cash ledgers as appearing in the Electronics Cash Ledger
- Reconciliation between credit notes/debit notes as per GST records viz a viz credit notes/debit notes as per books of account (involving GST credit notes/debit notes as well as financial credit notes/debit notes)
- Reconciliation of GST on overseas payments with financial statements.
- Reconciliation of foreign currency realisation received vis-à-vis export of goods/services claimed

Reconciliations to be prepared -

□ *Reconciliation between various GST returns/records:*

- Reconciliation of turnover (taxable, exempted, nil rated and non-GST) between GSTR-1 and GSTR-3B
- Reconciliation of ITC as per GSTR-3B and ITC appearing in GSTR-2A
- E-way bill and GSTR-1 reconciliation
- Reconciliation between delivery challan issued and job work transactions reported in ITC-04
- Reconciliation between TDS/TCS credit availed in Electronics Cash Ledger vis-à-vis corresponding supplies reported by the counter parties

Reasons for difference in Reconciliations-

❑ ***Permanent difference –***

Items appearing only in Accounts and not in GST - Dividend received, Income Tax refund received, creditors written back etc

Items appearing only in GST and not in Accounts - barter transactions, supply without consideration, deemed valuation etc

❑ ***Timing or temporary difference –***

Books of account are prepared on accrual basis where GST liability arises based on time of supply principles.

There could be instances where GST liability has been paid on the advances received by the services providers, but such advances are shown in the Balance Sheet

Reasons for difference in Reconciliations-

- ❑ ***Books of account maintained on cash basis, but GST is payable on TOS basis –***

Unbilled revenue and work in progress - In respect of continuous projects, the revenues are normally recorded in the books of account based on work completion

Method of recording the entries in the books of account - The revenues in the books of account may be classified based on the management requirements and or the business practices. It may not directly provide the information required for GST purposes, viz., the revenues in the books of account may be recorded based on geographical segmentation, industry specific classification etc

Reasons for difference in Reconciliations-

❑ Differences due to errors committed

There could always be possibility of bona fide errors being committed by the taxpayers in the GST compliance. It could be error of commission or omission. Error of commission arises when the taxpayer, based on his understanding of the law, treat a particular transaction in a particular way but the legal interpretation of transaction could require the treatment to be undertaken in a different way

Reasons for difference in Reconciliations-

❑ Differences due to fraud committed:

There could be exceptional cases where assessee could indulge in suppression or intentional evasion of taxes by not reporting transactions in the GST returns, deliberating claiming wrong exemption though not entitled to claim such exemption etc. The reconciliation statement could highlight such differences which could possibly lead to creation of additional demand on the taxpayers

Reasons for difference in Reconciliations-

- ❑ **Reconciliation of Turnover as per Consolidated financial statement with Turnover computed for each state for GSTR- 9C:**

A person having business operations in multiple States is required to obtain registration in each such State/UT, and for each such registration he is considered as distinct person. As per Section 44(2) **every registered person** is required to file reconciliation statement along with Annual return

Ratio Analysis – Importance and Role

There are several types of ratios which may be used for determining that the taxpayer has complied with the GST provisions –

1. Profitability Ratios

- a. Net profit Ratio
- b. Gross profit ratio

2. Revenue in books vs revenue in GST

3. Reverse charge ratios

- a. RCM credit availed vs RCM paid

4. Payment Ratio

5. Expenses and input tax ratios

- a. Total ITC availed in GSTR-3B [Table 4(A)(5)] to Total ITC available in GSTR-2A
- b. Expenses incurred from registered persons to total expenses (GSTR-2 expenses viz-a-viz total expenses)
- c. Input tax utilised to input tax availed
- d. ITC availed to Gross tax liability Ratio
- e. ITC utilised to Gross tax liability Ratio

Key Ratios Explained

Ratio	Formulae	Remarks
Net Profit Ratio	Net profit / Turnover * 100	<ul style="list-style-type: none"> • Compare with previous year's Net profit Ratio. • A significantly higher ratio can be an indicator of possible case of Profiteering. This is to be further checked with the Gross Profit Ratio • Any items of abnormal nature to be examined and separated to arrive at proper Net Profit Ratio.
Gross Profit Ratio	Gross Profit / Turnover * 100	<p>Higher GP ratio could be a probable case of anti-profiteering However, the following needs to be done and taken care of-</p> <ul style="list-style-type: none"> ▪ Check for changes in Accounting treatment, if any ▪ Ascertain previous taxes on purchase versus GST ▪ Ascertain credits in the past versus ITC under GST ▪ Method of valuation stock ▪ Excise regime versus GST regime ▪ The tax element is not required to be added

Key Ratios Explained

Ratio	Formulae	Remarks
Turnover in books to turnover in Returns (per GSTIN)	(Revenue from operations + Other income) / Outward supplies declared in GSTR-3B	<ul style="list-style-type: none"> If the ratio is <u>greater than 1</u> i.e. revenue in Books > outward supplies declared in GSTR-3B, then, following may be the reasons <ul style="list-style-type: none"> ✓ Revenue may have been recorded pertaining to advances received in past, tax for which has already been paid ✓ it may be possible that taxpayer has not disclosed some supplies. This could result in under reporting and under payment of tax liability If the ratio is <u>less than 1</u> i.e. revenue in Books < outward supplies declared in GSTR-3B, the reasons could be below – <ul style="list-style-type: none"> ✓ Branch Transfers ✓ Principal – agent transfers ✓ Schedule I transactions ✓ Advances received, for which invoices have not yet been issued.

Key Ratios Explained

Ratio	Formulae	Remarks
<p>Total ITC availed in GSTR-3B to Total ITC available in GSTR-2A</p>	<p>GSTR-3B (Table 4(A)(5)) / Total ITC available in GSTR- 2A</p>	<ul style="list-style-type: none"> ✓ This ratio would enable to ascertain if any unjust / extra input tax credit has been taken. ✓ If the ratio is >1, it could mean that the taxpayer has taken excess credit over and above what was available to him or some of the suppliers have not filed their GSTR-1 so corresponding credit does not auto populate in the GSTR-2A/2B of the recipient. ✓ If the ratio is <1, this could lead to possibility of some credits missed out or some blocked credits which appear in the GSTR-2A/2B but not taken in GSTR- 3B.
<p>Input tax utilised to input tax availed</p>	<p>Input tax utilized / Input tax credit availed</p>	<ul style="list-style-type: none"> • This ratio indicates the proportion of credit utilized viz a viz credit availed. • The comparison of ratio as a trend over a period of time could indicates the credit utilization pattern of the organization.

Key Ratios Explained

Ratio	Formulae	Remarks
Expenses incurred from registered persons to total expenses	$\frac{\text{Total expenses in GSTR- 2A of the taxpayer}}{\text{Total Expenses in Books of Accounts}}$	<ul style="list-style-type: none"> This Ratio may be used to understand the purchasing pattern of the taxpayer. It should be calculated annually as the expenses may be booked at a later date in the books of accounts. This ratio could give an indication as to the average range within which the assessee may be availing the credits.
ITC availed to Gross tax liability Ratio	$\frac{\text{ITC availed}}{\text{Gross tax liability}} * 100$	<ul style="list-style-type: none"> This ratio is one of the most important ratio which could be used for establishing the pattern of the ITC availed with the output tax liability. Higher ratio (closer to 1 or greater than 1) in a particular period should be supported by some of the following illustrative factors <ul style="list-style-type: none"> Inverted duty structure / Additions to movable fixed assets or capital expenditure / Significant transitional credits / Higher inward supply compared to outward supply resulting in stock accumulation

Key Ratios Explained

Ratio	Formulae	Remarks
Reverse charge credit availed to reverse charge liability discharged	ITC on reverse charge (excluding ITC claimed on imports) / Total RCM liability discharged (excluding GST paid on imports)	<ul style="list-style-type: none"> This ratio should not be greater than 1. If it is greater than 1, it means that the taxpayer has claimed incorrect / ineligible amount as ITC. It also implies that taxpayer has availed credit for previous period in subsequent period (Higher RCM paid in previous period)
<i>Payment Ratios</i>	Liability discharged in cash / Total Liability (both excluding reverse charge liability)	<ul style="list-style-type: none"> Lower ratio should be substantiated with higher ITC to Gross liability ratio and higher expenses incurred from registered persons to total expense ratio. This would indicate the percentage of liability which is discharged by the taxpayers by paying the liability in cash.

Thank you

