

# Key Issues in GST Audits and Investigations



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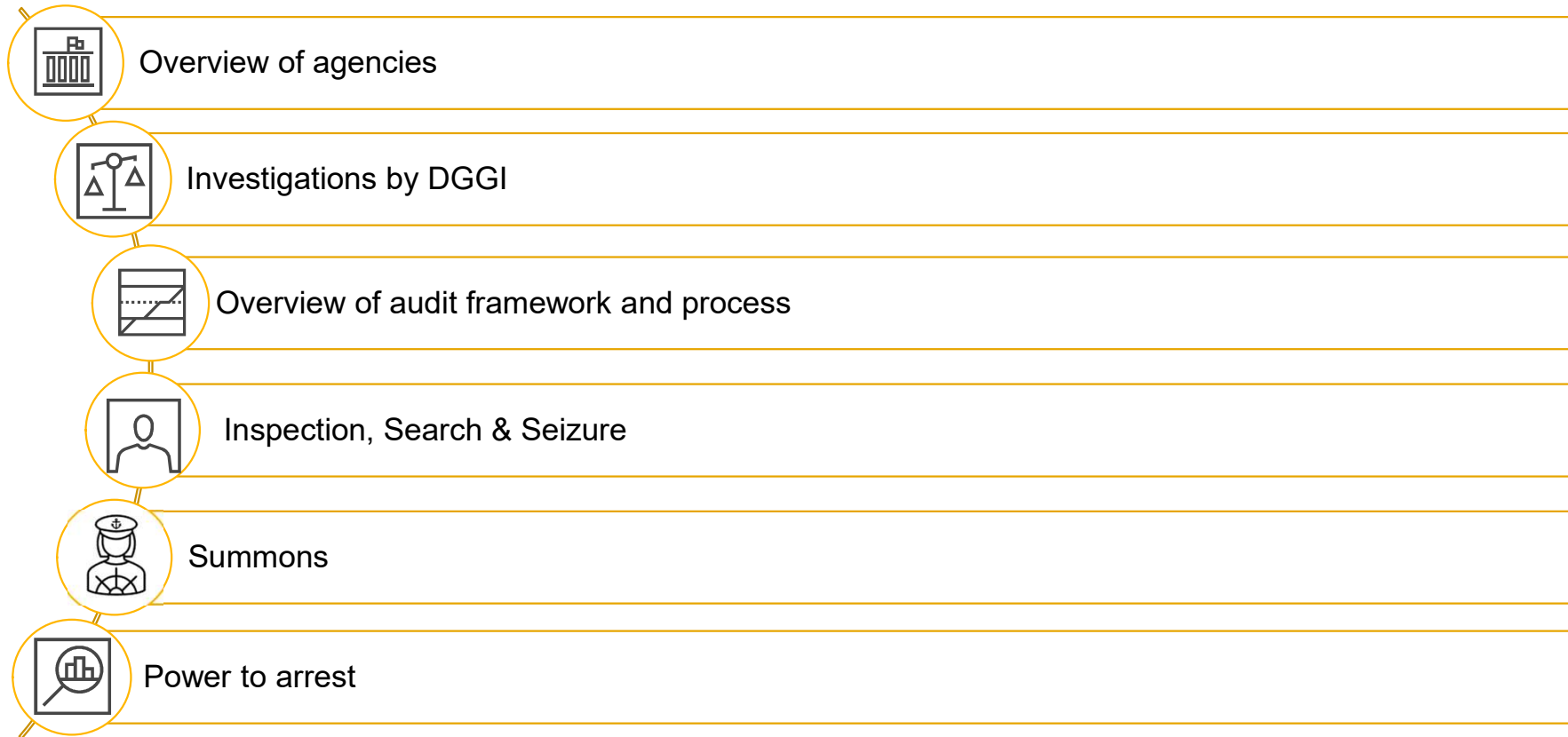


1.

# Background



# Framework of Audit, Investigation, Inspection and Search



# Legal Definition and Scope of GST Audit

## **Audit Defined (Section 2(13))**

- Examination of records, books, returns and statements
- Verify correctness of turnover, tax paid, Input Tax Credit
- Assess overall compliance with GST provisions

## **Period of Audit**

- Can cover a financial year, part thereof, or multiple years
- Governed by Rule 101(1) of CGST Rules

## **Conducting Authority**

- Section 65 of CGST Act empowers tax authorities
- Rule 101 of CGST Rules prescribes audit procedures

## **Jurisdictional Scope**

- Place of business of registered person
- Department's office as per Section 65(2)

# GST Audit Process Timeline

## 15 Days

Minimum notice period before audit commencement per Section 65(3)

## 6 Months

Commissioner may extend audit period as per proviso to Section 65(4)

**Notice**

**Prep**

**Audit**

**Extension**

**Report**

## Issuance

FORM GST ADT-01 issued to registered person under Rule 101(2)

## 3 Months

Completion period from commencement date per Section 65(3)

## Final

Audit Report issued in FORM GST ADT-02 under Section 65(6)

# Types of GST Audits

## Departmental Audit

- Section 65 comprehensive examination
- Tax authorities verify returns
- Assess compliance accuracy
- Review books and records
- Identify discrepancies
- Validate tax calculations

## Special Audit

- Section 66 Commissioner order
- Complex business scenarios
- CA or Cost Accountant conducts
- Specialized expertise required
- Technical examination focus
- Detailed investigation

## Tax Audit

- Section 35(5) mandatory audit
- Threshold-based requirement
- Annual compliance check
- Filed with GSTR-9C
- Turnover exceeds limit
- Routine verification



# Audit Selection Criteria and Desk Review

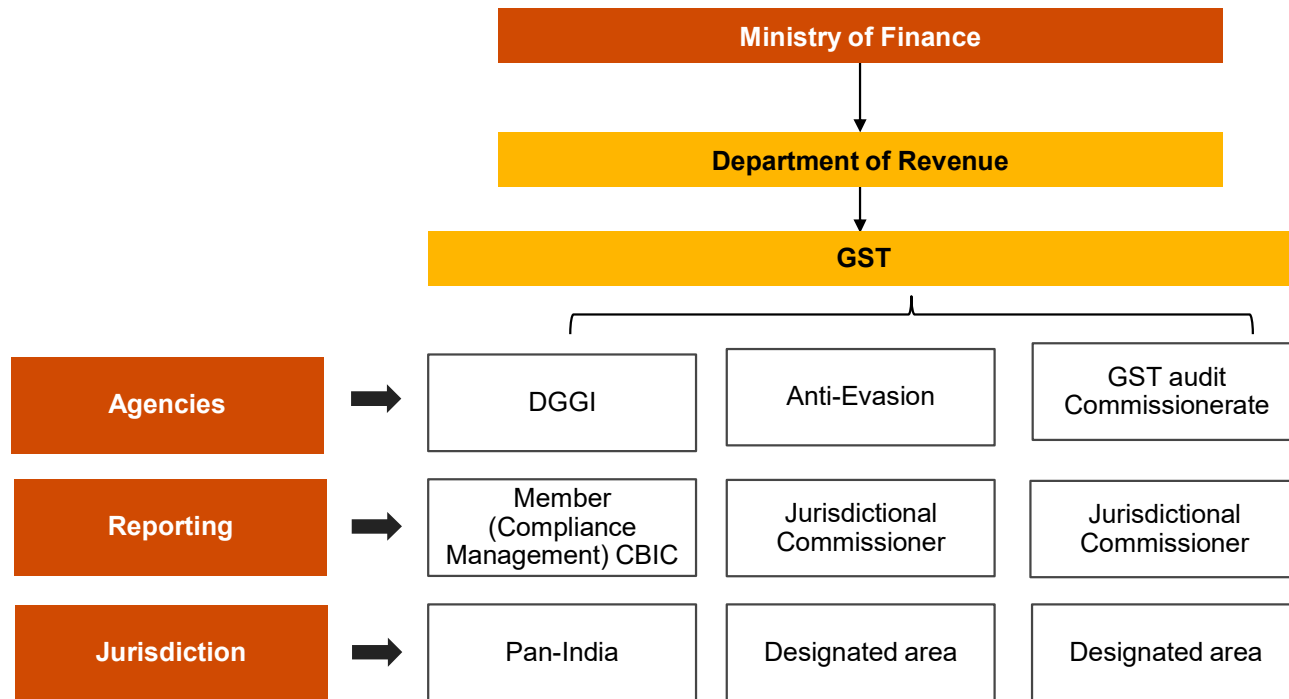
- **Risk-Based Selection Parameters**

- GSTR-3B vs GSTR-1 significant discrepancies
- Large ITC claims with 2A/2B mismatches
- Sector-specific high-risk profiles identified
- Previous compliance history reviewed
- Intelligence-based DGGI inputs analyzed
- Abnormal refund or zero-tax patterns

- **Desk Review Process**

- Pre-audit returns analysis conducted
- Specific issues identified upfront
- Preliminary observations prepared
- Audit dates determined post-review

# Agencies that undertake Audits & Investigations



- Division of taxpayers between Centre and State is done for administrative reasons under GST – registration, returns, refunds, etc. to be granted by jurisdictional authority
- Intelligence based enforcement action can be taken by both authorities within the State – Centre and State GST authorities

State GST – Audits / assessments are handled by jurisdictional officers and investigation is undertaken by Investigation wing (general practice)



# Typical reasons of investigations under GST

Investigation under GST is initiated typically on the following intelligence/information or reasons to believe

Tax collected but not paid to the Government

Wrong availment of exemption notifications

Wrong availment/ non-reversal of input tax credit

Non-payment of tax on supply of taxable goods and services

Short payment of tax by undervaluing taxable goods and services

Non-payment of tax under reverse charge mechanism

Issuance of fake invoices and fraudulent availment of input tax credit on the basis of fake invoices

Fraudulent availment of refund of IGST on export of goods etc.

Maintenance of books of accounts in such a manner as is likely to cause evasion of tax

# Investigation by DGGI (Guidelines)



- Nature of investigation**
  - Roles assigned in DGGI Charter (intelligence, detection, and prevention of tax evasion and fraud) to be investigated by DGGI
  - Should not be routine matters like scrutiny, audit etc.
- Jurisdiction and Approval**
  - Investigation within jurisdiction Zonal Unit (“ZU”) shall be approved by Pr. ADG/ADG of ZU.
  - Written approval of DG of Sub National Units (“SNU”) is required in case of (i) interpretation issue (first time levy on sector/commodity/services), (ii) Sensitive matters, (iii) matters pending with Council, (iv) big MNC and (v) jurisdiction outside of ZU.
- Fake ITC**
  - End availer of ITC to be identified, jurisdictional ZU to initiate investigation only to end availer (not intermediary).
  - In exceptional cases, ZU not having jurisdiction on end availer can initiate investigation with approval of respective DG of SNU
- Summons**
  - Record-based details from PSUs, listed companies, or government agencies should be requested via official letters from the designated officer, not through summons.
  - Relevance and propriety of the information or documents being sought must be recorded before issuing a summons to regular taxpayers

# GST Audit – Key legal provisions



## Audit by tax authorities

Section 65 of CGST Act read with Rule 101 of the CGST

Audit defined under GST	“Audit” is <b>examination</b> of records, books, returns and statements to <b>verify the correctness</b> of turnover declared, tax paid, Input Tax Credit (‘ITC’) etc. and assess compliance [Section 2 (13)]
Period of audit	Period of audit can be a financial year or part thereof or multiple FY’s [Rule 101(1)]
Prescribed format for the issue of notice for conducting audit	FORM GST ADT-01 [Rule 101(2)]
Place of conduct of audit	Place of business of registered person or department’s office [Section 65(2)]
Minimum time allowed to the registered person before commencement of audit	Registered person (RP) shall be informed not less than <b>15 working days</b> prior to the conduct of audit [Section 65 (3)]
Time period for completion of audit?	Audit should be <b>completed within three months</b> from the date of <b>commencement</b> [Section 65 (3)]
Extension of period for completion of audit	<b>Commissioner may extend audit period by 6 months</b> [proviso to Section 65 (4)]

# Sample audit notices/ checklists (Relevant extracts)



Worldmark 1, Asset Area 11, Ground Floor and First Floor,  
Aerocity, Hospitality District,  
Indira Gandhi International Airport,  
NH-8, New Delhi, South Delhi, Delhi, 110037

Period - F.Y. (s) 2017-18 (01.07.2017 to 31.03.2018), 2018-19, 2019-20 & 2020-21

## NOTICE FOR CONDUCTING AUDIT

Whereas it has been decided to undertake audit of your books of account and records for the financial year (s) 2017-18 (From July, 2017 to March, 2018), 2018-19, 2019-20 & 2020-21 in accordance with the provisions of Section 65 of the *Central Goods & Services Tax Act, 2017*. I propose to conduct the said audit. Actual dates for conducting Audit will be communicated after completion of Desk Review.

And whereas you are required to: -

- i. furnish the undersigned the necessary record to verify the books of account and records or other documents as may be required in this context, and
  - ii. furnish such information as may be required and render assistance for timely completion of the audit.
2. You are hereby directed to attend in person or through an authorized representative during audit at this office and to produce your books of account and records (as per annexure enclosed) for the aforesaid financial year(s) as required for audit to this office, within 15 working days of receipt of this letter.

## ANNEXURE (List of documents for GST Audit purpose)

1. Copy of Annual Return submitted to the Registrar of Companies/ Form 3 CD/Tax Audit Report
2. Copy of Balance Sheet, Trial Balance, Profit & Loss Account, Director's Report, Auditor's Report
3. All Sale Bills raised
4. All Purchase Bills raised on the basis of which ITC has been availed
5. All Debit Notes/ Credit notes, if any
6. Export/SEZ related documents, if any viz. invoices, Shipping Bills, BRC.
7. Import related documents viz. Bills of Entry, B/L etc.
8. Copy of TRAN-1 form filed along with complete details
9. Copy of TRAN-2 form (if applicable/filed)
10. Electronic Credit & Cash Ledger for the audit period.
11. Details of ITC availed/ITC register
12. Any other related document(s) as may be required by the Auditors during the Audit.

**Audit notice issued by Delhi Central GST authorities**

# Sample audit notices/ checklists (Relevant extracts)

## **FORM GST ADT – 01** ( See rule 101(2)

### **Notice for conducting GST audit.**

Whereas it has been decided to undertake audit of your books of account and records for the period -**F.Y(s) 2017-18 (July 2017 to March 2018) 2018-19 & 2019-20** in accordance with the provisions of section 65 of CGST Act 2017. The following officers would conduct the said audit at your place of business during October- 2021.



And whereas you are required to:-

- i. afford the officers / undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
  - ii. furnish such information as may be required and render assistance for timely Completion of the audit.
2. You are hereby directed to attend in person or through an authorised representative on or before 19-07-2022 at 6th Floor, MHU Complex, No.692, Annasalai, Nandnam, Chennai – 600 035 to the officers mentioned above and to produce the following details/documents for the aforesaid period as required for audit:
1. Balance Sheet and Profit and loss account with schedules and notes to accounts for the year 2017-18, 2018-19 & 2019-20.
  2. Income Tax audit Report (including Form 3CA, 3CD etc) for the year 2017-18, 2018-19 & 2019-20 and Income Tax returns ITR3/ITR4/ITR5/ITR6.
  3. ITC ledger showing details of ITC availed in GSTR3B returns in following format:

SL NO.	NO.	SUPPLIER	NAME OF THE TAXPAYER	INVOICE VALUE	TAXABLE VALUE	IGST	CGST	SGST	TOTAL
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5. Purchase Ledger for the period July 2017 to March 2018), 2018-19 & 2019-20 in the following format:-

INWARD SUPPLY PURCHASE LEDGER YEAR WISE & MONTH WISE IN SORTED ORDER									
SL NO.	INVOICE NO.	GSTIN OF SUPPLIER	NAME OF THE TAXPAYER	INVOICE VALUE	TAXABLE VALUE	IGST	CGST	SGST	TOTAL

6. Statutory Auditor's report for the period 2017-18, 2018-19 & 2019-20.
  7. Cost Audit report, if applicable for the period 2017-18, 2018-19 & 2019-20.
  8. Electronic Credit and Cash Ledgers for the period 2017-18, 2018-19 & 2019-20.
  9. Electronic Liability Ledger for the period 2017-18, 2018-19 & 2019-20.
  10. Assessee/Taxpayer profile if maintained.
  11. Work Flow Chart showing the nature of business activities.
3. In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.
4. It is also requested to designate a staff / employee of your firm very well versed with details of GST Returns and other works related to compliance of GST for coordinating with the Audit Party and communicate his/her name, designation and contact numbers and e-mail id of the person so designated.
5. It is further requested that full co-operation may be extended to the Audit party in carrying out the audit and keep all other relevant records ready in your office premises so that the audit can be conducted smoothly and quickly when the Audit Party visits your premises.

**Audit checklist issued by Chennai Central GST authorities**

# Sample audit notices/ checklists (Relevant extracts)

## ANNEXURE -A

### LIST OF DOCUMENTS AND RECORS TO BE KEPT READY

1	Brief Note On Nature Of Business	13	Details Of Zero Rated Supply / Supplies To SEZ, etc.
2	List of Commodities Sold/ Purchased With HSN Code Along with Rate Of Tax	14	Details Of Exempt Supplies
3	GST Returns And Reconciliation With Annual Returns And Books Of Accounts.	15	Supplies Made To Unregistered Persons
4	Trading, Profit And Loss Account/ Balance Sheet/Annual Financial Statement	16	Supplies Made To Composition Taxable Persons
5	Tax Audit Report And Annual Reconciliation Statement in GSTR-9	17	Supplies Made To UIN Holders
6	Trial Balance	18	Inward Supplies Of Goods And/ Or Services Month wise, Head wise summary
7	Ledgers	19	List Of Purchases Which Are Eligible For ITC
8	Journal Vouchers	20	List Of Purchases Which Are Not Eligible For ITC
9	Bank Statement/ Bank Book	21	Import Of Goods And/ Or Services
10	Cash Book	22	Inward Supplies From ISD
11	Details Of Debit Note And Credit Notes	23	List of Transactions Subjected To RCM
12	Outward Supplies Of Goods And/ Or Services Month wise, Head wise Summary	24	Details Of Fixed Assets / Capital Assets And ITC Claimed If Any.
		25	Reconciliation Of ITC As Per GSTR-2A and GSTR3B If Any
		26	Details Of ITC Reversal
		27	E-Way Bills Wherever Applicable.
		28	Stock Register
		29	Details Of TDS/ TCS
		30	All Other relevant Documents Asked By Audit Officer.

Audit checklist issued by Maharashtra State GST authorities + Specific exhaustive format for ITC register

# Preparing for GST audit – Action Plan



Study the Balance Sheet, notes to accounts, RPT transactions and Trial Balance in detail



Check revenue reconciliations between books & returns



Check ITC reconciliation between GSTR-3B vs. 2A/ 2B and GSTR-8A vs. GSTR-3B



Study major customer/ supplier agreements in detail and vouch high value invoices



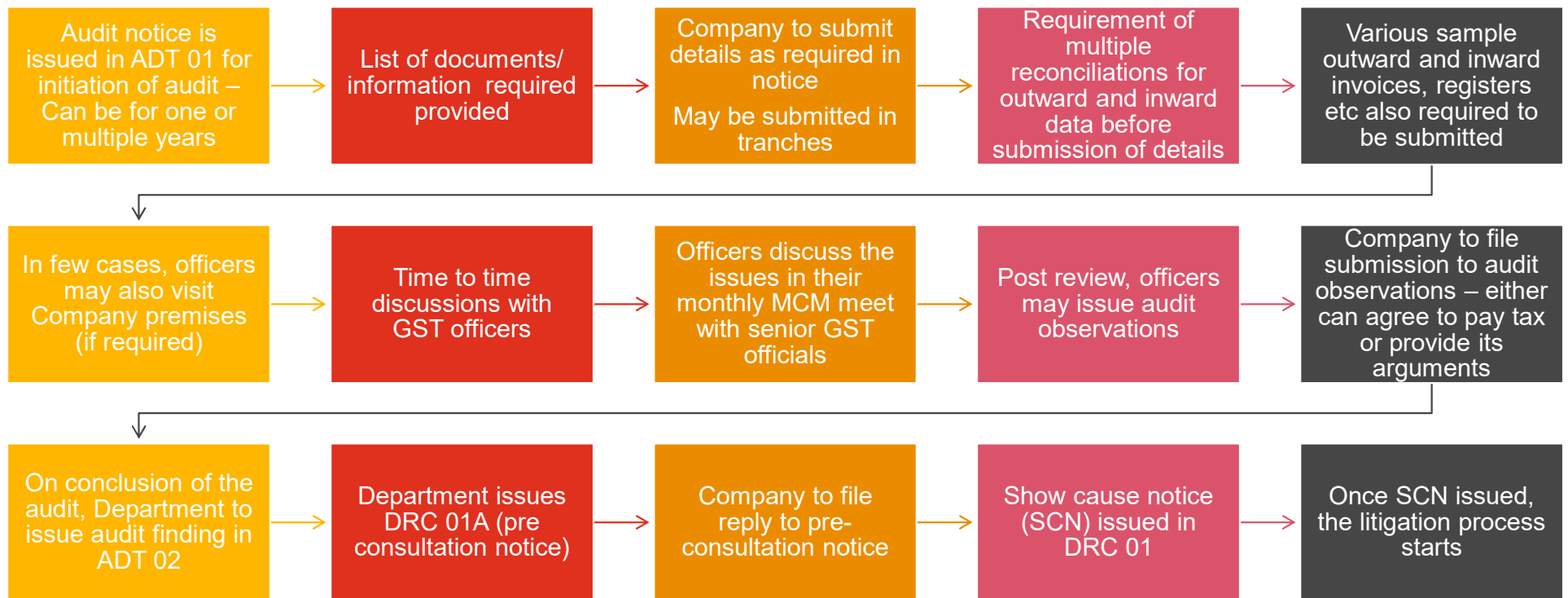
Obtaining a functional understanding of business is must – authorities always understand business first



Highlight issues to client up front, explore solutions and seek legal inputs

Up front preparation helps at the time of discussions/ hearing with GST auditors

# Overview of steps in GST audit



# Final Audit Report (ADT-02)



## Audit Report under section 65(6)

Your books of account and records for the period **Nov-2018 to March, 2020** have been examined and this Audit report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Service Tax
Tax	0	0	0	0
Interest	0	579	579	0
Any other amount	0	0	0	0

### Gist of audit objections:

Para No.	Gist of audit objection	Tax			Interest			Late Fee		
		CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST
1.	NON PAYMENT OF INTEREST ON NET TAX LIABILITY DUE TO DELAYED FILING OF GSTR3B RETURNS FOR THE MONTH OF JUNE-2019.	0	0	0	579	579	0	0	0	0
Total		0	0	0	579	579	0	0	0	0

Final Audit report issued by Chennai CGST auditors

# Some Points to Ponder



## **Circular on Audit issued by Government of Karnataka**

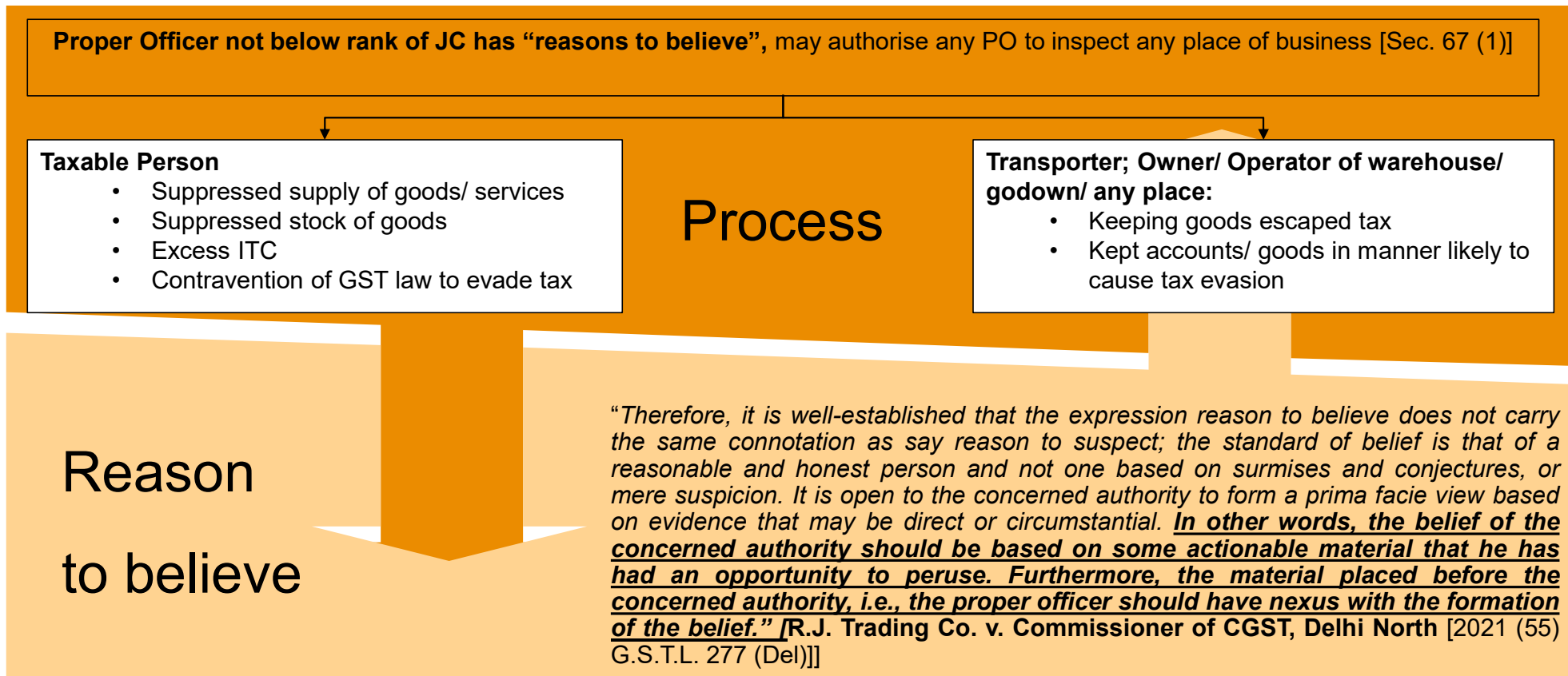
- Preamble of the Circular provides that mandate for the department is to ensure annual revenue from GST and other commercial taxes as estimated by the Government are met
- In such a scenario, can taxpayers expect a fair adjudication?

## **Circular on procedure to be followed by Audit Monitoring Committee issued by Government of Kerala**

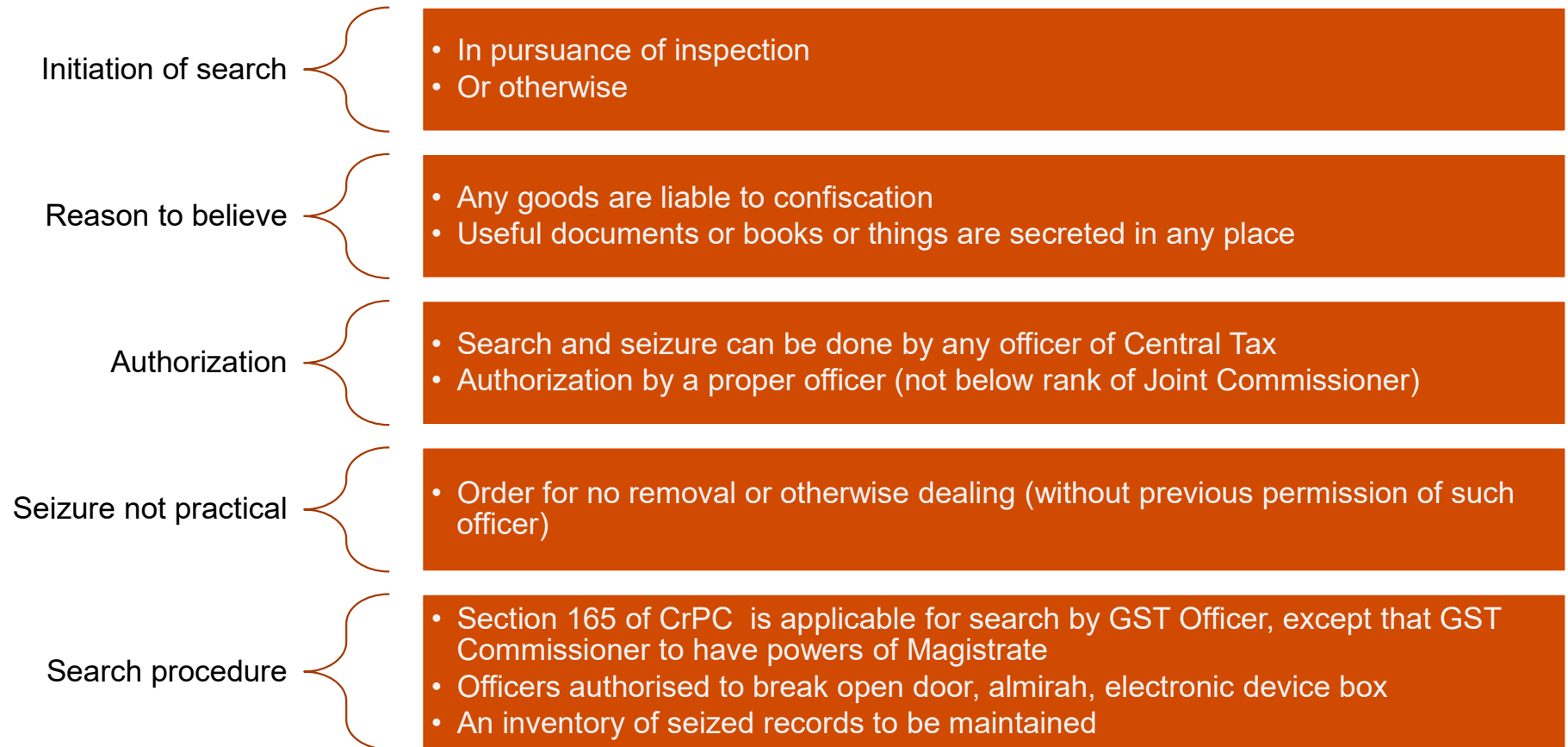
- Circular provides for jurisdictional adjudicating officers to be a part of the Audit Monitoring Committee
- In such scenario, will the adjudicating officer drop the points raised and finalized in audit?



# Inspection



# Search and Seizure



# Summons



- To give **evidence**
- **Produce documents**
- Any other thing

- To be issued as **last resort** if asseses not cooperating
- Language of summons - **not harsh**, causing mental stress to receiver
- Authenticity of summons - **DIN** should be mentioned, authenticity of which can be verified online
- Superintendent to **submit report** to senior officer containing brief of proceedings conducted



- **Any person** whose attendance is necessary
- **Senior officers** like MD/ CEO **not summoned** in first instance as not involved in day to day operations

- Statements recorded **under oath** – false statement punishable under IPC
- Are **admissible as evidence** and forms part of relied upon documents

- Superintendent after obtaining prior written permission from Assistant Commissioner or above

# Power to Arrest



A person can be arrested if the tax amount exceeds INR 20 million – monetary limit not applicable if repeat offender

Amount of Evasion	Type of offence	Term of imprisonment
> 50 million	Cognizable & Non-bailable	Upto 5 years with fine
> 20 million < 50 million	Non-cognizable & bailable	Upto 3 years with fine

Supreme Court has constituted 3-member bench to examine if GST officer can arrest taxpayer even before assessment or adjudication (after conflicting HC rulings)

Similar guidelines has been laid down to provide that powers of arrest is to be effected only in exceptional circumstance involving evasion of duties o misdeclaration involving import of goods of over INR 2 crs

# Best Practices for investigations / audits



## Do's

- Verify identity of the officers and understand purpose of their visit
- Indicate willingness to cooperate as a responsible corporate
- Assign a middle level person aware of the information/documents sought as a SPOC
- Provide only the information/ documents sought
- Restrict response to question asked. It's alright to say "I need to check and revert" or "I am not aware of the finer details"
- Read the statement and notice before signing them
- Review document/ information submitted including statement given. Check from other industry players
- Undertake risk assessment and seek legal/ expert opinion/ support including on way forward/ options
- Always make submissions including documents under acknowledgement
- Reach out to Industry Association, if any industry or significant issue



## Don'ts

- Do not furnish unnecessary information/ details
- Do not respond on aspects/ subjects which is not dealt by you, or you do not have expertise
- Do not agree to pay any duty suo-motto. Authorities first need to establish violation through evidence
- Do not be threatened or coerced
- Do not allow multiple people to deal with the authorities
- Do not communicate orally or share information/ document on oral requests
- Do not make technical or legal submission more than required during the proceeding
- Do not avoid personal appearances against summon. Seek extension if required
- Do not send person other than the person summon except if allowed by the authorities

2.

## Issues faced during audit/ investigation



# Summons



## Summons issued from different State

- 'Any person' – whether person indicates territorial restriction [by application of CCP (R. 4 of Or. 5)]
- Or summon can be issued to any person, subject to nexus with inquiry

## Reference of Summon

- It should be reference to 'an inquiry' – it cannot be roving in nature
- It should be 'to give evidence or to produce a document or any other thing' – not for seeking interpretation [Sec. 2 of Evidence Act]

## Summons to MD, CFO, higher officials

- The officers should refrain from issuing summons to higher officials
- Challenging summon notice in writ petition

## Necessary for inquiry

- Summon notice it cannot be a mechanical reproduction of the words in the statute – it should lay down the required information/ or basis of enquiry [J. Sekar v UOI 2018 (361) E.L.T. 689 (Del.)]

# Parallel Proceedings



## Audit concluded – whether return scrutiny possible

- Audit is a detailed exercise, and inter alia includes all points which are subject matter of return scrutiny, therefore scrutiny not possible where audit is concluded
- Both Audit and Return scrutiny should not be conducted [Haryana Return Scrutiny Manual, para 4]

## Parallel Investigation by CGST and SGST

- Section 6(2)(b) – Initiation of proceedings by SGST officer – no proceedings by CGST officer on same 'subject matter'
- Receiving of summon *per se* is not same subject matter [Rais Khan, (2024) 16 Centax 359 (Raj.)]
- In investigation is by different officer of Center also – then also it can be challenged in Writ – Writ Court may direct transfer of files to one particular officer [Amit Gupta, (2023) 12 (Centax 85 (Del.)]

## Customs related matters during GST audit

- Whether Import IGST is duty of customs or GST. Import IGST is under the domain of GST officer [Ortho Clinical Diagnostics India Ltd.]
- Practical insights

# Issues during Audit



## Time limit of audit over

- Consequences where audit report is not issued within the prescribed period of 3 months, or within the extended period of additional 6 months
- Evidence collected in such audit can be used for issuing SCN [Pooran Mal AIR 1974 SC 348; R M Malkani AIR 1973 SC 157]

## 15% Penalty on demands arising out of audit

- Default practice of the department to consider the issues arising out of audit as Section 74 (5) issues
- Merely because an audit is conducted – it does not place the issues under Sec. 74 (5), unless the ingredients therein are clearly vindictive [Rays Power Infra Private Limited (2024 (3) TMI 438)]

## Writ against Audit Report

- Where the Final Audit Report is issued without considering the reply filed by the auditee – this is violation of principles of natural justice, and writ is maintainable [PBL Transport Corporation Pvt Ltd. (2024) 14 Centax 303 (AP)]

# Issues during search

## Spot collection/ deposit of tax

- The practice is highly deprecated and can be challenged in Court for appropriate relief [Vallabh Textiles 2023 (70) GSTL 3 (Del.)]
- Instruction No. 1/2022-23 [GST – Investigation] dated 25.02.2022
- Practical difficulties

## Whether cash can be seized during search

- Cash is not 'goods'; further things is not large to include 'cash' especially if it lacks relevance to the proceedings under the Act. Hence cash could not be seized [KM Food Infrastructure Pvt. Ltd. (2024) 15 Centax 415 (Del.)]

## Procedural safeguards during investigation

- Lawyer of the arrested person should be present at a visible distance, but not audible distance, while recording of his statement [Kalpesh Ghevarchand Jain (2023) 7 Centax 44 (Bom.)]
- Supreme Court's directions for installation CCTV recording at Investigation offices [Paramvir Singh Saini vs Baljit Singh & Ors. SLP 3543 of 2020]

# Evidence – reliability/ non reliability



## Reliance upon Digital Evidence

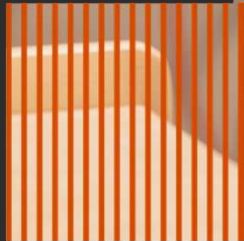
- Pen drives, Hard disks, floppies etc. are secondary evidences, they are admissible if either when the original computer through which the data is produced, is produced
- Or otherwise a certificate is produced by the owner of the computer as to authenticity of the data [Sachdev Overseas Fitness Pvt Ltd. (2024) 14 Centax 123 (Tri.-Hyd.)]
- Digital Evidence Manual issued by the Income Tax – requires certain procedures to be followed to allow the digital evidence to be admitted as evidence

## Cross examination

- No specific provision for cross examination of the person before any authority below the court [unlike Sec. 9D (2) of the Excise Act]
- However, cross examination should be provided as part of the principles of natural justice read with the principles of Indian Evidence Act

3.

# Learnings and Way Forward



# Key learnings

Handling **Physical Visits** – certain states (such as Haryana, Maharashtra, Telangana) are insisting on physical visits before concluding audits. Hence, clients should **designate locational SPOCs** to be prepared for such visits



**State level trial balances** – authorities insisting on state level TBs else proposing to initiate special audits u/s 66 or levy demand based on pan India data; recommended to implement process/ functionality for extracting state level TB data



**High focus on reconciliations** such as GSTR 1 vs 3B, ITC availed vs GSTR 2A/2B, Import ITC vs GSTR 2A/ ICEGATE data etc. – such basic reco's should be **kept ready for timely submissions**



Seeking reconciliation between balances in **GL ledger and GST reporting** which is complex and takes significant effort –being managed by providing key GLs (specially containing RCM transactions)



**Balanced approach** in communicating with authorities – less communication may lead to abrupt closures while excess communication may lead to never ending information requirements



Collation of information like invoices/ BoEs, vendor declarations, reversals/ adjustment details etc. usually takes substantial time – **SOP may be placed for expediting flow of information**




# Preparation for audits/ investigations





- 1 Client workshops, mock audits – focus on procedure, process and preparedness
- 2 Provide awareness around do's and don'ts
- 3 Provide indicative guidance on operational aspects – people, processes, records and social media
- 4 Emphasize importance of SOP, documentation
- 5 Discuss audit/ investigation related issues with clients, check quantification and evaluate litigation strategy/ SOP
- 6 Emphasize the need to leverage on litigation management and tax technology tools
- 7 Involve other stakeholders at the right time – TCDR, External Counsels


# Leveraging Navigate GST Tools in audits – Some use cases





 Prepare Input Tax Reconciliations at an invoice level – Manual reconciliations are time consuming & prone to error

 Assist clients in preparation of State-wise Trial Balances

 Reconcile outward registers by comparing data fetched by Tool from GST Portal and provide complete information

 For period prior to FY 21-22, details of credit notes issued against B2B invoices can be fetched

 Compliance history and registration status of suppliers can be checked – useful in defending ITC denial

 Navigate Disputes – can help in tracking instances of parallel proceedings / history of past tax notices and payments made , if any

# *Annexures*

# Indicative operational guidance – Investigation visit



1

Security personnel should be instructed to inform the concerned senior staff of Tax and Finance department immediately about the visit of any tax authority

2

When in doubt, the identity of the person coming for survey / search should be verified

3

The employees should be informed of the relevant protocols or must know the relevant persons to be involved, who will be in a better position to handle the questions

4

Concerned person can then check with the tax authorities to understand the purpose of the proceedings which will facilitate such proceedings to be carried out smoothly

5

In case the employees are unsure about answering a question, they should inform the tax authorities that they would check and confirm

6

Copies of statements recorded by the tax authorities or information provided to them to be maintained



# Indicative operational guidance – Summons

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- 1 Do not provide any incorrect information and do not hide information that you are aware
- 2 Read the responses being recorded and ask for any changes if required before sign off
- 3 Copy of statement may not be provided and so record the questions/ responses given after the summons
- 4 In case the employees are unsure about answering a question, they should inform the Tax Authorities that they would check and confirm
- 5 Post-search debriefing to be done. In case there are any discrepancies/ inaccuracies in the statements recorded, then a quick retraction may be filed, with proper reasons- as a sworn affidavit by the person who gave the statement

Thank you