

ASSESSMENT & SCRUTINY OF RETURNS

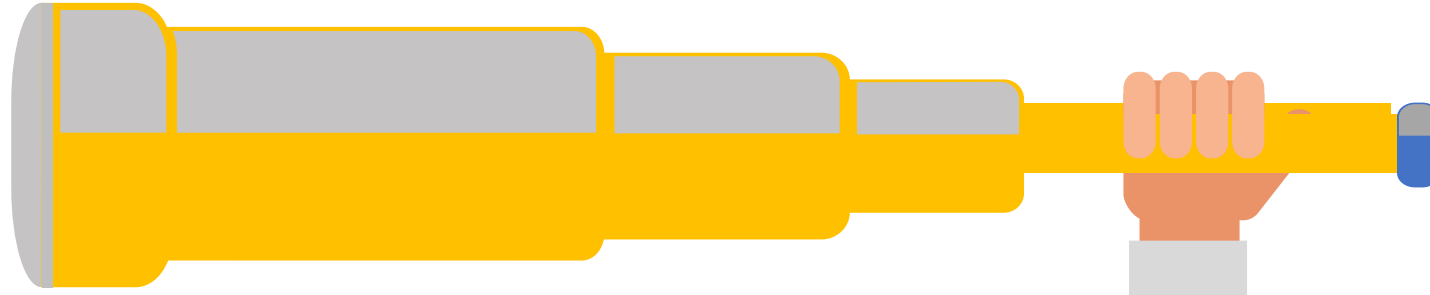
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INTRODUCTION

**ARISE, AWAKE
AND
STOP NOT
TILL THE GOAL IS REACHED**



AGENDA



1. Introduction



3. Scrutiny



2. Types of Assessment



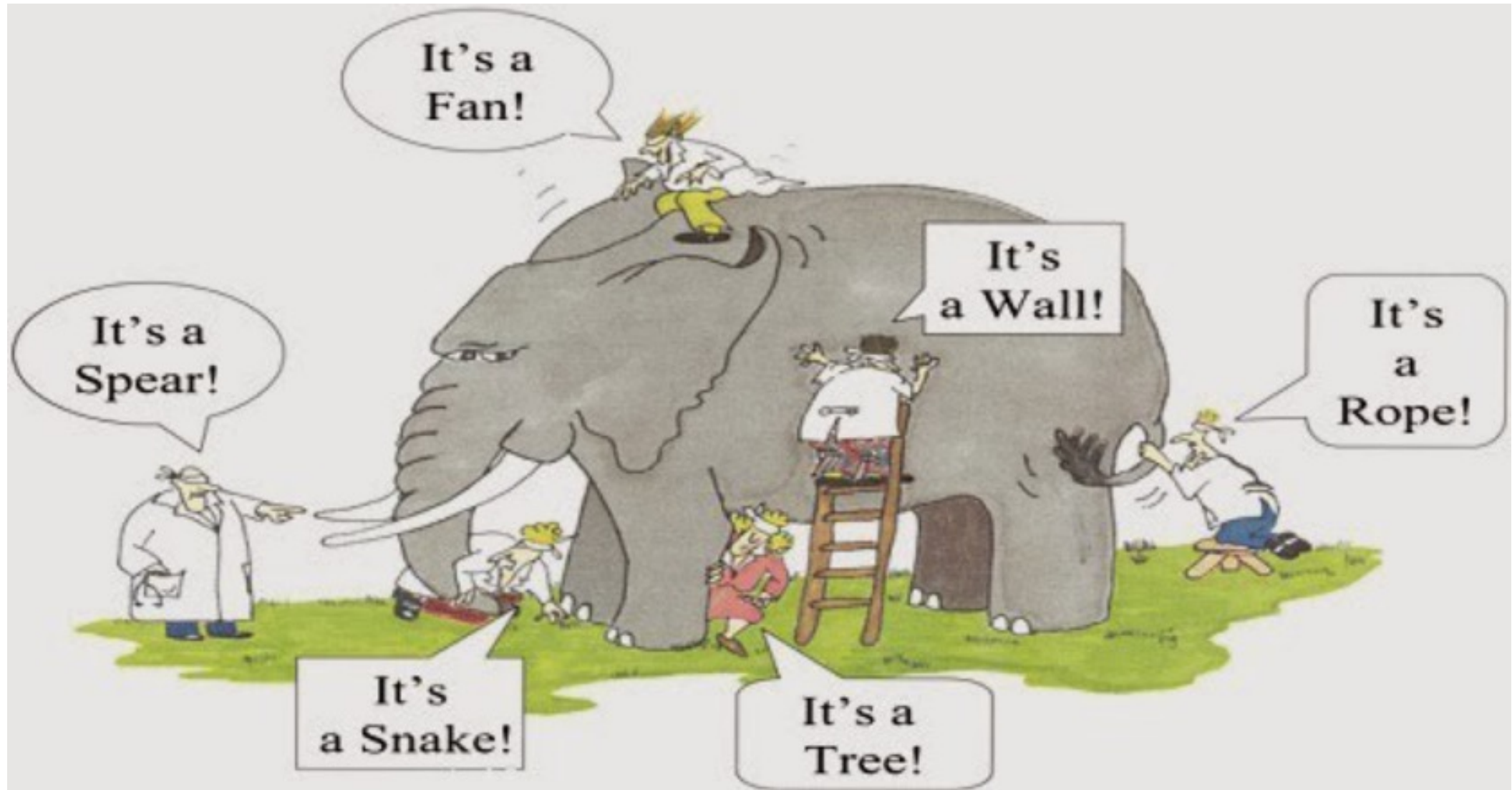
4. Q & A



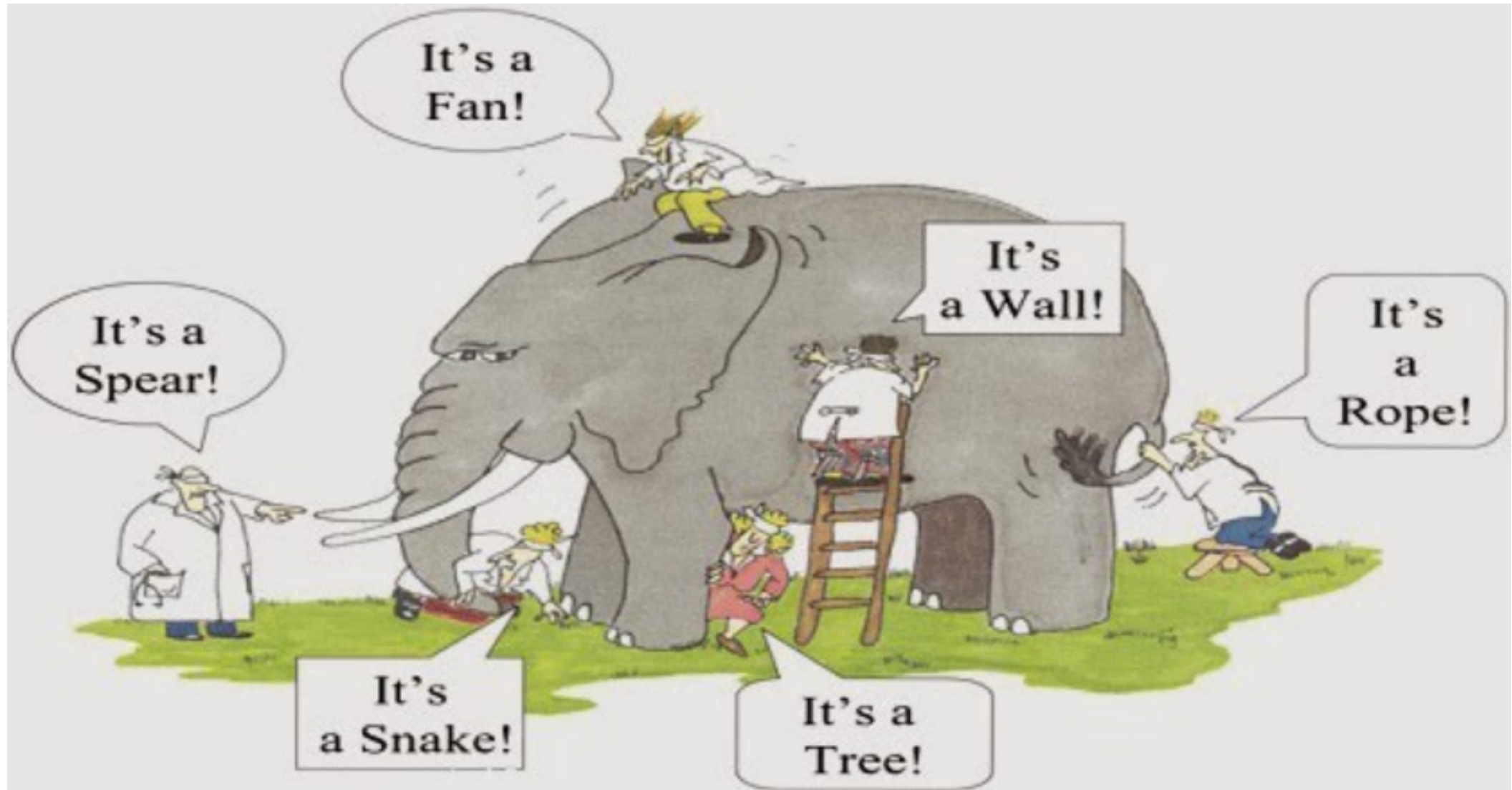
INTERPRETATION



READ WITH OPEN EYES



READ WITH OPEN EYES



TYPES OF ASSESSMENTS

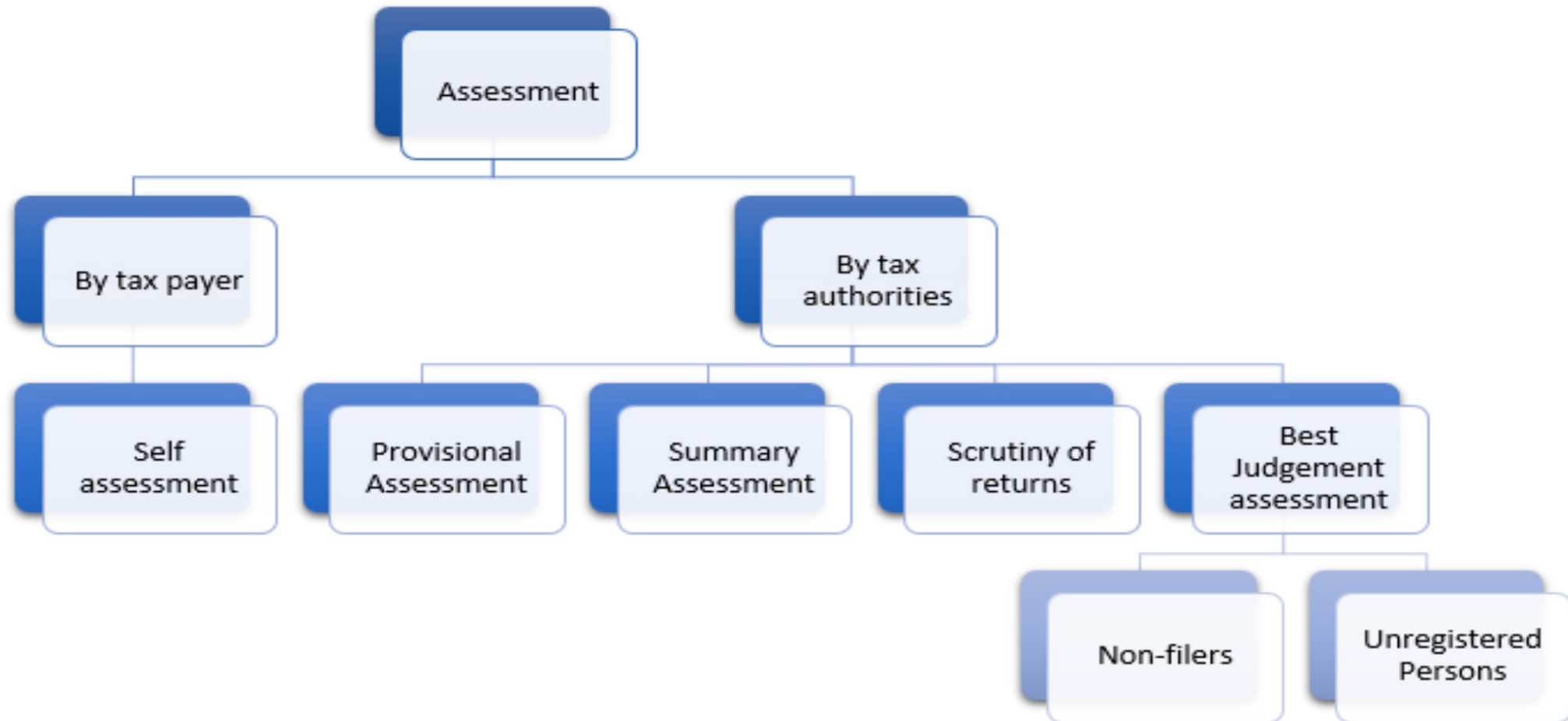
IMPORTANT PROVISIONS

- Section 39 – Furnishing of Returns
- Section 44 – Annual Returns
- Section 45 – Final Returns
- Section 47 – Levy of Late Fee
- Section 50 – Interest on delayed payment of tax
- Section 54 – Refund of Tax
- Section 56 – Interest on Delayed Refunds
- Section 59 – Self Assessment

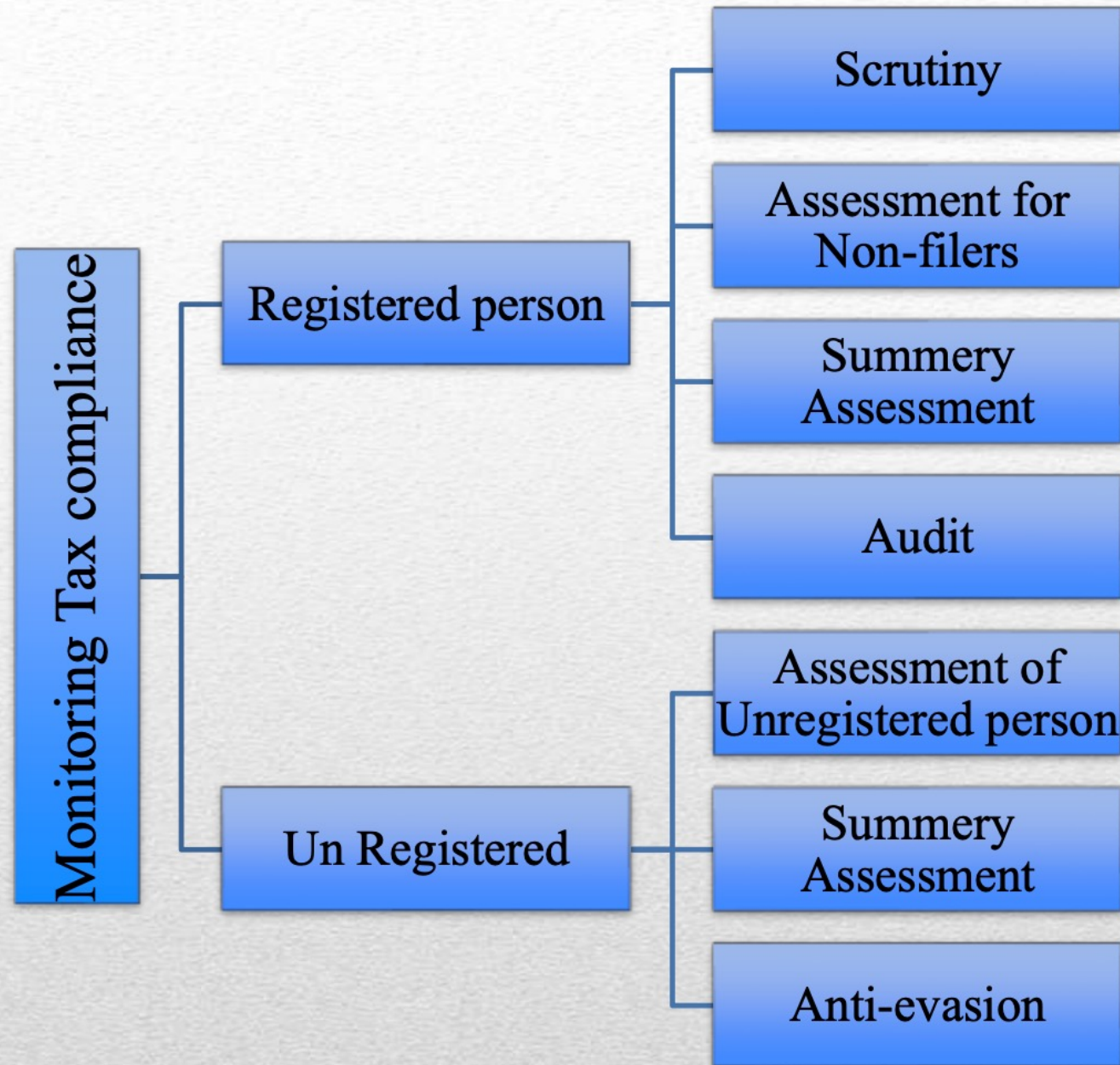
TYPES OF ASSESSMENTS

- ❖ 59 - Self-assessment
- ❖ 60 - Provisional assessment
- ❖ 61 - Scrutiny of returns
- ❖ 62 - Assessment of non-filers of returns
- ❖ 63 - Assessment of unregistered persons
- ❖ 64 - Summary assessment in certain special cases

TYPES OF ASSESSMENTS



TYPES OF ASSESSMENT

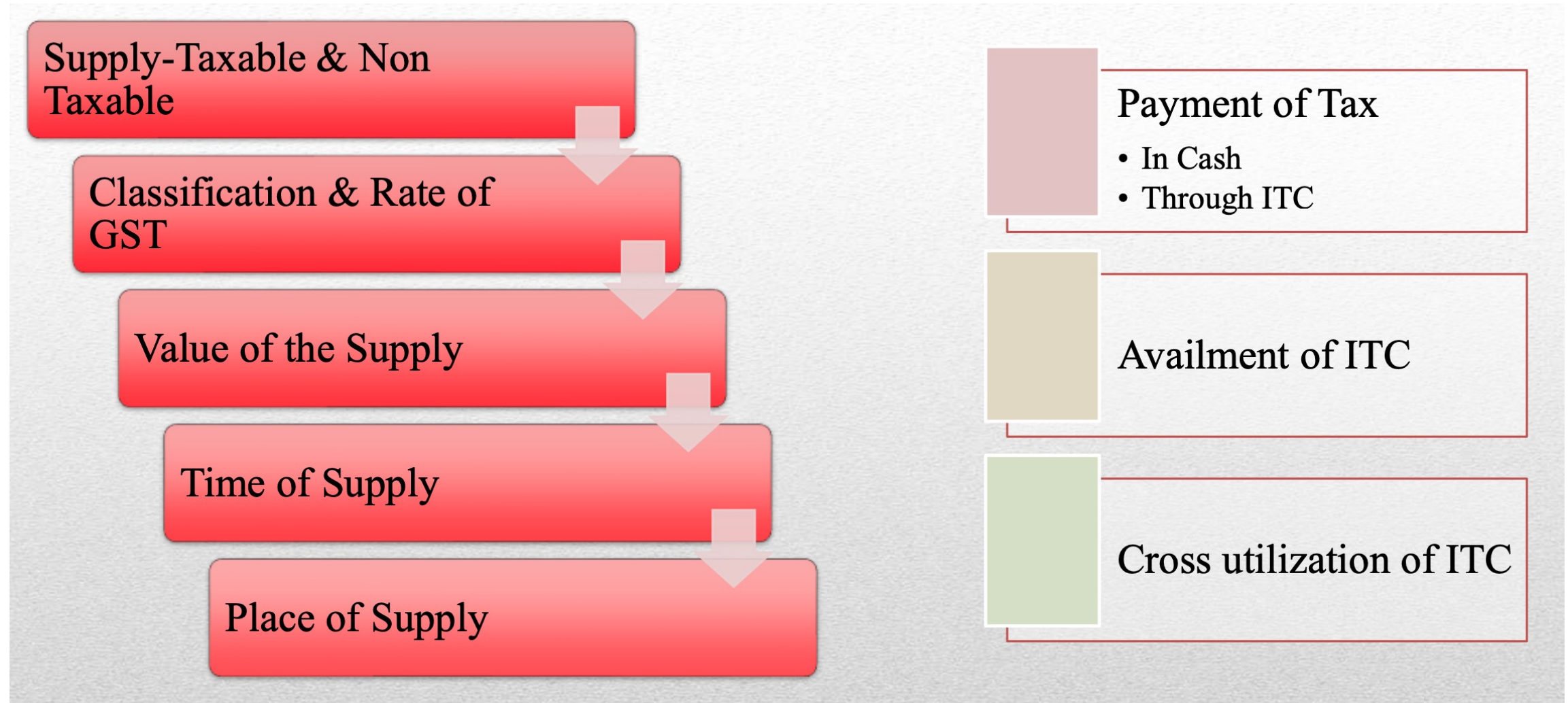


SELF ASSESSMENT

SELF ASSESSMENT - PROVISIONS

Section	Rule	Form
Self-Assessment by Regular Assessee and Casual Taxable Person u/s 39(1)	61	Form GSTR 3 & 3B
Self-Assessment by Composition Dealer u/s 39(2)	62	Form GSTR 4
Self-Assessment by Non-Resident Taxable Person u/s 39(5)	63	Form GSTR 5
Self-Assessment of OIDARS provided by person located outside India to non-taxable person in India u/s 39(1)	64	Form GSTR 5A
Self-Assessment by ISD u/s 39(4)	65	Form GSTR 6
Self-Assessment of Tax Deducted At Source u/s 39(3)	66	Form GSTR 7
Self-Assessment of Tax Collected At Source u/s 52(4)	67	Form GSTR 8
Self-Assessment for purpose of Refund by persons having UIN u/s 39(1)	82	Form GSTR 11

SELF ASSESSMENT – DETERMINATION OF TAX LIABILITY



PROVISIONAL ASSESSMENT

PROVISIONAL ASSESSMENT

- Provisional assessment can be resorted to in the following situations:
 - (i) When a taxable person is unable to determine the Value of goods or services - viz, there
- is a difficulty in ascertaining:
 - Transaction value to be adopted for determination of tax payable; e.g. open market value to be determined, where consideration is not wholly in money or where supplier enters into cost plus contract with the buyer.
 - Inclusion or exclusion of any amounts in the value of supply; e.g. as per pre existing agreement certain percentage of discount to be allowed to buyer depending upon the buying targets achieved by them.
 - Existence of any circumstance causing failure of transaction value declared e.g. where the supplier is concerned whether the price of the supply can be regarded as the sole consideration for the supply, if the supply has been effected based on a certain promise made by the recipient, for which the monetary value is indeterminable.

PROVISIONAL ASSESSMENT

- (ii) Rate of tax applicable on the supply cannot be determined by the taxable person, viz there is difficulty in ascertaining:
 - Classification of the goods and / or services under the relevant Schedule;
 - Eligibility to any exemption notification u/s 11 or compliance with conditions associated with such exemption.
 - Applicability of any abatement/deduction in rate of tax to the assessee u/s 9 or compliance of conditions associated with such abatement.

PROVISIONAL ASSESSMENT

- The facility of provisional assessment is available only in the cases of Valuation and determination of rate of tax.
- The provisions of this section cannot be extended for any other purposes or subject matter. For example, there may be uncertainty about the kind of tax (IGST or CGST-SGST) applicable, time of supply, supplies to be treated as “supply of goods” or “supply of services”, determination of mixed or composite supply is a rate dispute, admissibility of ITC, quantum of reversal of IT, whether a particular action is supply or not. In the aforesaid kind or classes of cases, recourse is not available to provisional assessment.
- The provisional assessment cannot be resorted to by the proper officer on suo-motu basis

PROVISIONAL ASSESSMENT – FORMS

- ✓ FORM GST ASMT - 01-Application for Provisional Assessment Request.
- ✓ FORM GST ASMT - 02-Notice.
- ✓ FORM GST ASMT - 03 -Reply to Notice.
- ✓ FORM GST ASMT - 04 -Order for Provisional Assessment.
- ✓ FORM GST ASMT - 05 -Execution of Bond.
- ✓ FORM GST ASMT - 06 –Notice for Final Assessment.
- ✓ FORM GST ASMT – 07-Final Assessment Order.
- ✓ FORM GST ASMT – 08-Applicaion for release of security.
- ✓ FORM GST ASMT – 09-Order for lease of Security.

PROVISIONAL ASSESSMENT – PROCESS

1. Filing of Application

- In terms of Rule 98(1), the process of provisional assessment commences on furnishing of an application by the registered person along with the necessary supporting documents in FORM GST ASMT-01, electronically through the common portal

2. Issue of Notice

- The proper officer will thereafter issue a notice in FORM GST ASMT-02. As per ASMT-2, reply is required to be given within 15 days to the registered person and if required seek additional information or documents.
- At this stage the proceedings are deemed to have commenced and the applicant is required to file his objections / make submissions in FORM GST ASMT – 03. The registered person can also appear in person and be heard provided he makes a specific request for a personal hearing.

PROVISIONAL ASSESSMENT – PROCESS

3. Issue of Order and Furnishing of Security

- On due consideration of the reply so filed, and after providing a reasonable opportunity of being heard the proper officer must issue an order in FORM GST ASMT-04, by allowing payment of tax on provisional basis, indicating the value or rate or both on the basis of which assessment is allowed on a provisional basis. The proper officer, in the normal course, cannot pass an order rejecting the application of provisional assessment. Since section 60(1) employs the term ‘shall’ pass order ‘allowing’ payment of tax provisionally
- The order so passed should also indicate the amount for which bond has to be executed in Form GST ASMT – 05 by the applicant. The security has to be furnished in the form of bank guarantee not exceeding 25% of the bond ‘amount’ which shall include IGST, CGST, SGST or UTGST and cess (if any) payable in respect of the transaction.
- As per Form GST ASMT-5, if the bond and security is not provided within period specified in notice, the provisional assessment shall lapse.

PROVISIONAL ASSESSMENT – PROCESS

4. Finalisation of Provisional Assessment

- Once the above process is complete the proper officer by issue of a notice in FORM GST ASMT-06, will call for information and records required for finalization of assessment.
- On conclusion of the due process of hearing, a final assessment order shall be passed by the proper officer in FORM GST ASMT-07, specifying the amount payable or refundable to the registered person within a period of 6 months from the date of communication of provisional assessment order.

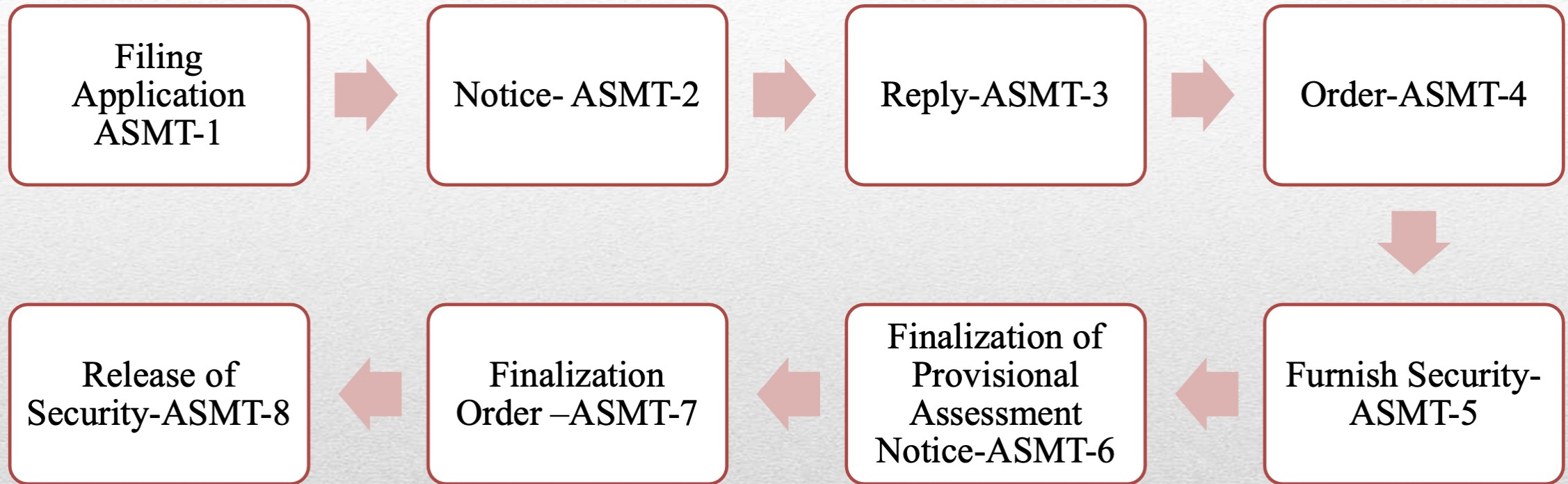
5. Release of Security consequent to Finalization

- On conclusion of the final assessment order the applicant can file an application under Rule 98(6) in FORM GST ASMT- 08 for release of security furnished. On receipt of such application, the proper officer ought to release the security furnished, after ensuring that the payment of the amount specified in the final assessment order and issue an order in FORM GST ASMT–09.
- This order has to be issued within a period of 7 working days from the date of receipt of the application for release of security.

PROVISIONAL ASSESSMENT – INTEREST

If the amount of tax determined to be payable under final assessment order, is more than the tax which is already paid along with the return filed in terms of section 39, the registered person shall be liable to pay interest on the shortfall, at the rates specified in Section 50(1) of the Act[i.e. @18%], from the first day after due date of payment of tax in respect of the said goods and /or services or both, till the date of actual payment, irrespective of whether such shortfall is paid before or after the issuance of order for final assessment.

PROVISIONAL ASSESSMENT – INTEREST



SCRUTINY OF RETURNS

IMPORTANCE OF RETURNS

1.

Self Assessed
Tax

2.

Onus is on
Taxpayers

3.

Timely filing of
Returns

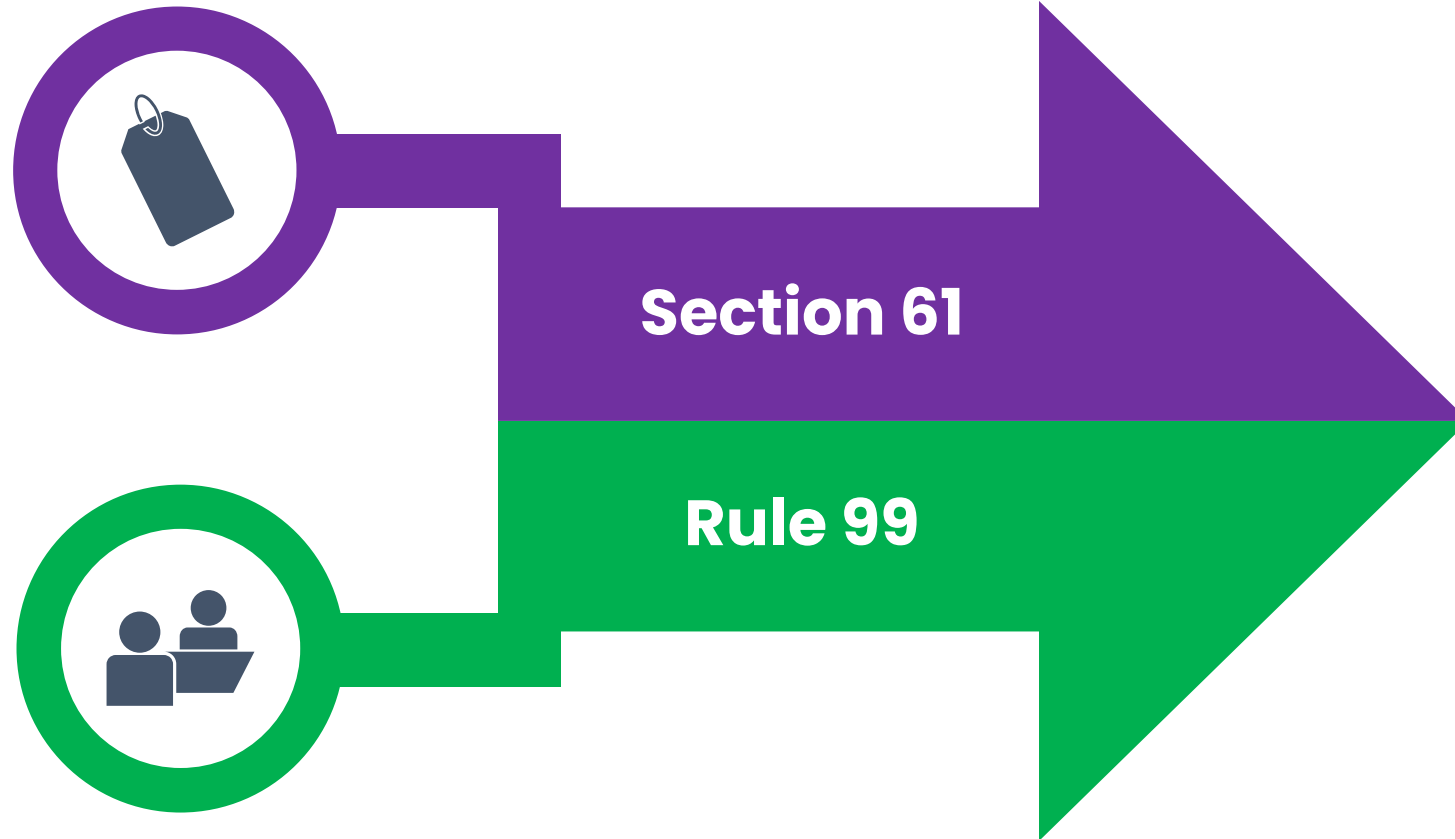
4.

Follow
Provisions

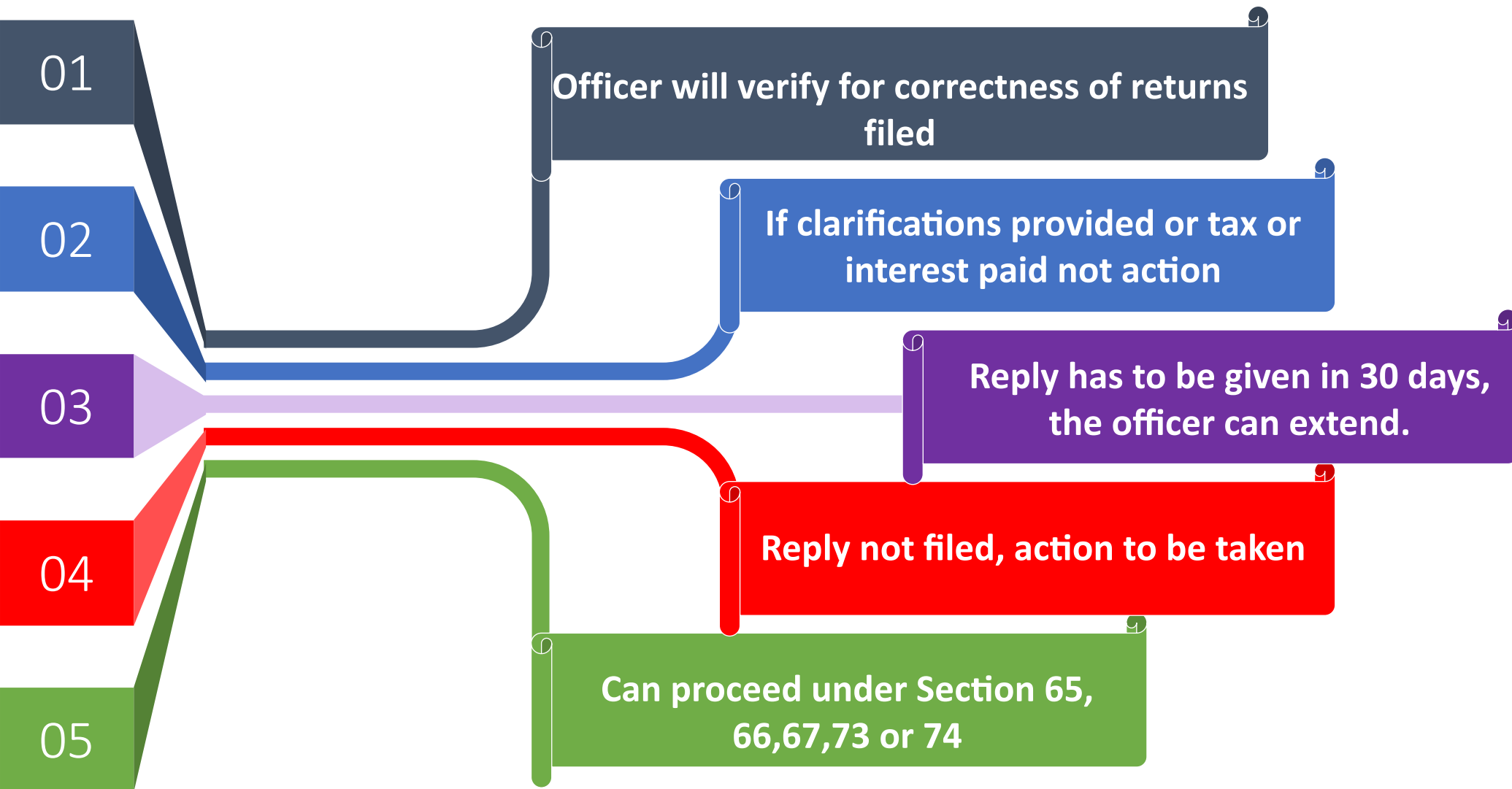
5.

Maintain proper
books of
accounts

PROVISIONS



SECTION 61



SECTION 61



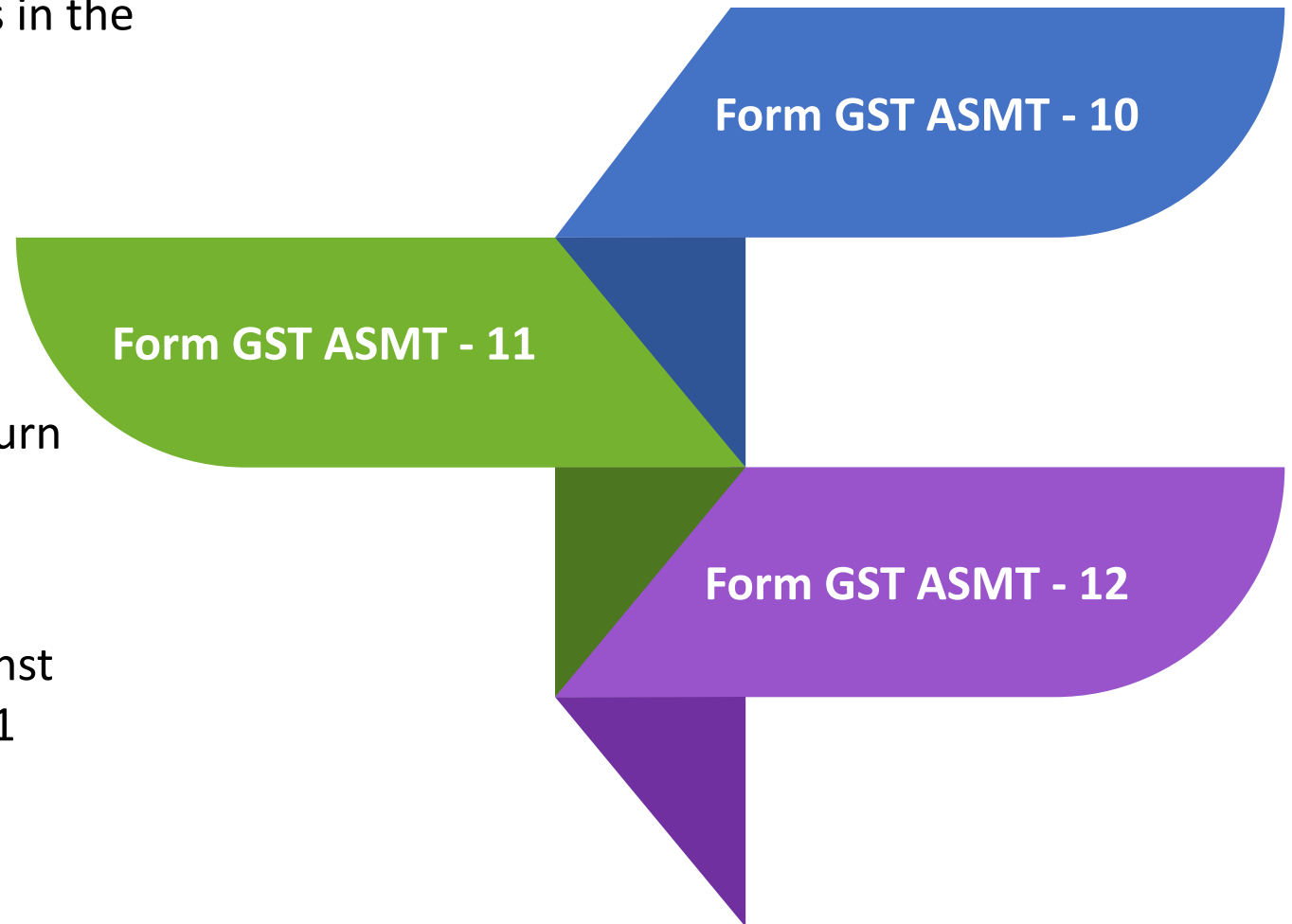
Notice for intimating discrepancies in the Return after scrutiny.



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



Order of acceptance of reply against the notice issued under section 61



SOP FOR SCRUTINY OF RETURNS

Instruction No.
02/2022-GST
dated 22 March
2022

**Standard
Operating
Procedures**

Instruction No.
02/2023-GST
dated 26th May 2023



SOP OVERVIEW

Selection

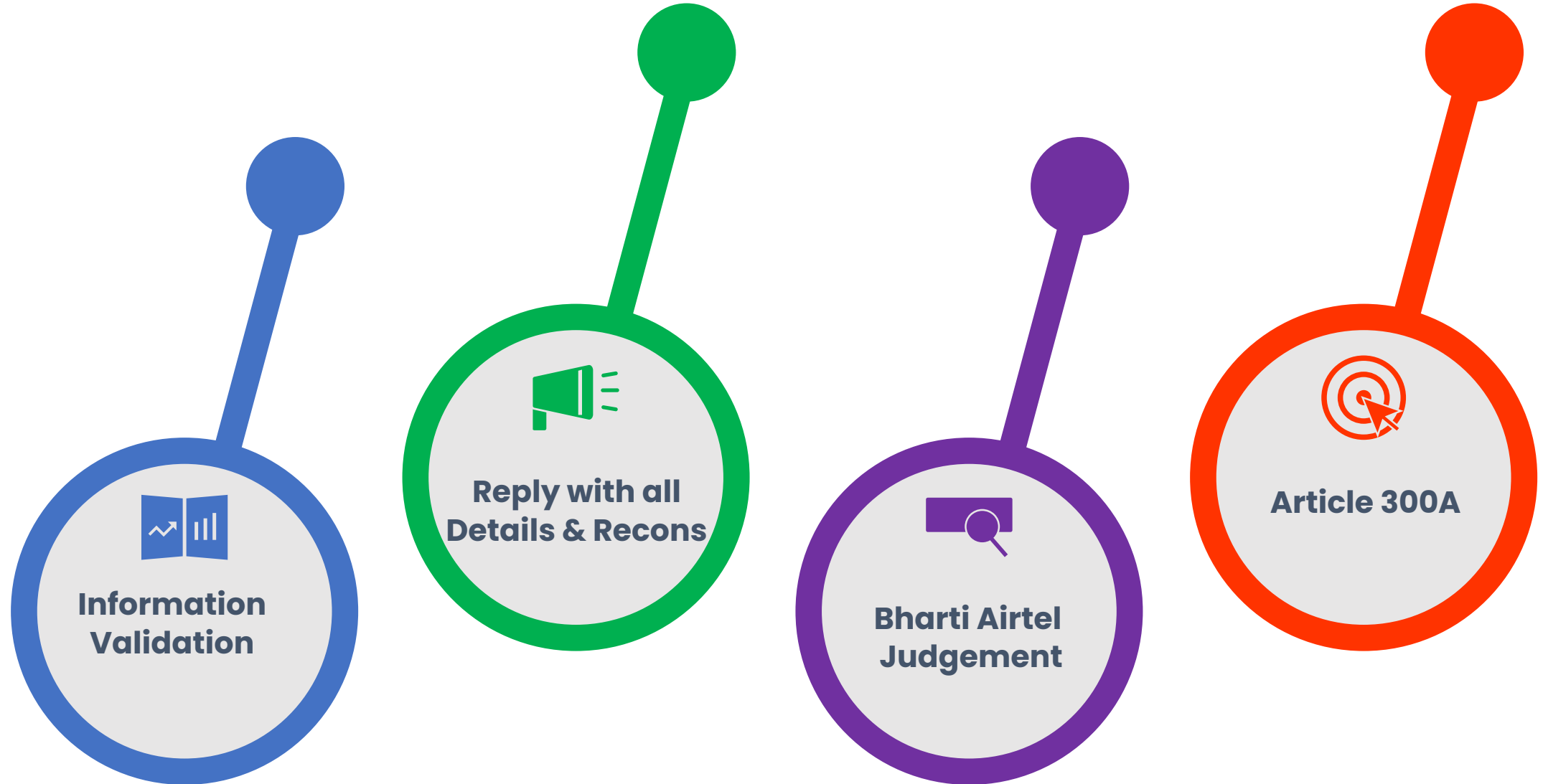
Scrutiny

Process

Timelines

**Reporting
&
Monitoring**

SOP OVERVIEW



REPLY TO FORM GST ASMT – 10 IN 11

GSTR – 1 Vs 3B

GSTR 3B – 3.1(a)+(b) = GSTR
1 Tables
4A+4B+6A+7A(1)+7B(1)+11A
+11B+Ammendments

ITC on RCM

ITC Discharged and availed
in 3B must be equal

RCM 2A Vs 3B

RCM declared by Vendors
must be equal to more than
RCM declared in Table 3.1(d)
of 3B

ITC - ISD

Table 4A(4) of GSTR 3B must
be equal to less than Table 7
& 8 of GSTR – 2A

GSTR 1/3B
liability with
e-waybill

Import of
goods with
ICEGATE

ITC on inward
supplies whose GST
Registration is
canceled
Retrospectively

ITC Reversals –
42/43, Payment of
Interest, Penalty &
Late Fee,

IMPORTANT CASE LAWS/ REFERENECES

1. Circular # 183/2022

2. Union of India Vs
M/s. Bharti Airtel Ltd

3. M/s. Garo Traders Vs
Joint Commissioner
Commercial Taxes ,
Calcutta High Court

4. M/s D.Y Beathel
Enterprises Vs The
State Tax Officer (Tax)
Madras High Court

CASE LAWS

CASE LAW ALERT

PETITIONER/RESPONDENT

M/s. Nagarjuna Agro Chemicals Pvt.
Ltd
State of UP & Others

COURT

Allahabad High Court

QUESTION RAISED

Is the department required to issue a notice under Section 61(3) of the CGST Act 2017 before initiating proceedings under Section 74 of the CGST Act 2017?

ORDER

The scrutiny process and proceedings under Section 74 of the CGST Act are different. Prior notice under Section 61(3) is not necessary for initiating proceedings under Section 74. The Petitioner has been given an option to file an appeal within 2 weeks.

01Jun2023

CASE LAW ALERT

PETITIONER/RESPONDENT

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Is the department required to issue a notice under Section 61(3) of the CGST Act 2017 before initiating proceedings under Section 74 of the CGST Act 2017?

ORDER

The scrutiny process and proceedings under Section 74 of the CGST Act are different. Prior notice under Section 61(3) is not necessary for initiating proceedings under Section 74. The Petitioner has been given an option to file an appeal within 2 weeks.

01Jun2023

CASE LAW ALERT

PETITIONER/RESPONDENT

M/s. Suncraft Energy (P.) Ltd.
Assistant Commissioner, State Tax & Others

IN THE COURT OF

High Court of Calcutta

7Aug2023

GROUND OF APPEAL

The Petitioner is aggrieved by both the Order passed by the Single Bench and the Order passed by the Revenue, which resulted in the disallowance of Input Tax Credit (ITC) for cases where the suppliers had not filed their GSTR-1. The Petitioner's argument is that he should not bear the brunt of the supplier's non-compliance with tax payments, as he has duly paid taxes, received the goods, and possesses valid tax invoices, all of which are prerequisites for availing the input tax credit. The Petitioner has cited relevant references to press releases issued by the Government asserting that GSTR-2A is a mere facilitation measure.

ORDER

The Court has ruled in favor of the Petitioner, setting aside both the Order passed by the Single Bench and the Order passed by the Revenue. The Court clarified that the disallowance of ITC can only be justified when the Revenue takes appropriate action against the supplier. Additionally, the Court emphasized that the Revenue must adhere to the press release issued by CBIC, which dictates that recovery proceedings against the recipient should be initiated only in exceptional circumstances.

CASE LAW ALERT

PETITIONER/RESPONDENT

Thirumalakonda Plywoods

The Assistant Commissioner – State Tax,
Anantapur Circle – 1

IN THE COURT OF

High Court of Andhra Pradesh

27Jul2023

QUESTION RAISED

The Petitioner, who is aggrieved by the Order passed by the Respondent, has filed a Writ challenging the time limit prescribed for claiming ITC, stating that it violates Articles 14, 19(1)(g), and 300-A of the Constitution of India. The Petitioner also contends that Section 16(2) of the CGST Act has an overriding effect on Section 16(4), and that payment of late fees should entitle them to claim ITC beyond the limitation period. Additionally, the Petitioner asserts that DRC-01 & DRC-07 were not issued following due process.

ORDER

The Court has dismissed the writ petition, stating that imposing a time limit for availing input tax credit is not violative of Articles 14, 19(1)(g), and 300-A of the Constitution of India. The Court further held that Section 16(2) will not have an overriding effect on Section 16(4) of the CGST Act, and mere payment of late fees will not entitle the taxpayer to avail the input tax credit. The Court upheld the order passed by the Respondent.

ASSESSMENT OF NON FILERS

ASSESSMENT OF NON FILERS

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 sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue

ASSESSMENT OF NON FILERS

- Non-compliance with the notice issued under Section 46 paves the way for initiating the proceedings under this section.
- If the assessee fails to furnish the return within 15 days of issue of notice under section 46 then the Proper Officer may assess the tax liability in accordance with the provisions of Rule 100 i.e. to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as ‘best judgment assessment’.
- It can be completed without giving notice of hearing to the assessee. However best judgment assessment should be made on the basis of material available or material gathered by proper officer.

ASSESSMENT OF NON FILERS

Section 46. Notice to return defaulters.

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

SOP for issue of Notice under Section 46 (Circular No. 129/48/2019-GST, dated 24-12-2019(F. No. CBEC-20/06/04/2019-GST)

100. Assessment in certain cases

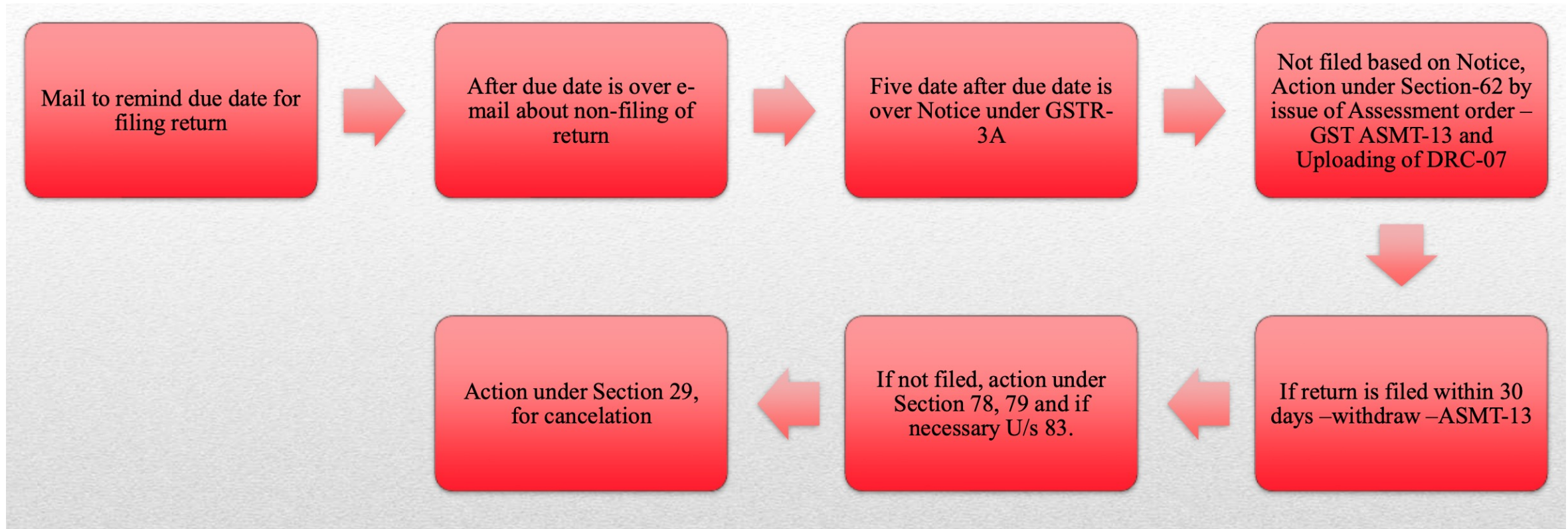
The order of assessment made under sub-section (1) of section 62 shall be issued in FORM

GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.

ASSESSMENT OF NON FILERS

- This section is invokable only for non-filing of GSTR-3/3B and GSTR-10 (final return on cancellation of registration) because this section refers to non filing of return under Section 39 and Section 45.
- Section 62 can not be invoked for non-filing GSTR-1, GSTR-2 and GSTR-9.
- Before taking action under this Section Notice under Section 46 has to be issued. This is pre-condition.

CASE LAWS



ASSESSMENT OF UN REGISTERED PERSONS

ASSESSMENT OF UN REGISTERED PERSONS

- 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.

ASSESSMENT OF UN REGISTERED PERSONS

- This Section is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration, will come within scope of operation of this Section.
- This provision also covers cases where registration was cancelled under section 29(2).
- Section 29(2) of the Act covers 5 instances where registration may be cancelled by proper officer:
 - (a) A person who contravenes the provisions of this Act or Rules made thereunder; or
 - (b) A composition person who fails to furnish returns for 3 consecutive tax periods; or
 - (c) A person other than composition person who fails to furnish returns for 6 consecutive months or
 - (d) A person who has sought voluntary registration but has failed to commence business within 6 months; or
 - (e) Where registration has been obtained by way of fraud, willful misstatement or suppression of facts.

ASSESSMENT OF UN REGISTERED PERSONS

- This section begins with the phrase “Notwithstanding anything to the contrary contained in section 73 or section 74”. It therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment.

ASSESSMENT OF UN REGISTERED PERSONS

- For assessment under this section, notice has to be issued as per Rule 100(2) in FORM GST ASMT-14 by the proper officer. The notice would contain the reasons / grounds on which the assessment is proposed to be made on best judgment basis. The registered person is allowed a time period of 15 days to furnish his reply, if any. After considering the said explanation, the order has to be passed in FORM GST ASMT- 15.

Extract of Rule 100(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 after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT- 15.

SUMMARY ASSESSMENT

ASSESSMENT OF UN REGISTERED PERSONS

- 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.

ASSESSMENT OF UN REGISTERED PERSONS

- The summary assessment can be undertaken in case the following conditions are satisfied:
 - The Proper Officer must have evidence that there may be a tax liability; and
 - The Proper Officer has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily. The proper officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue.
- Summary assessment under this Section of the CGST Act can therefore be construed in some sense as a ‘protective assessment’ carried out in special circumstances, where there are sufficient grounds to believe that taxable person will fail to make payment of any tax, penalty or interest, if the assessment is not completed immediately. Such failure to pay tax, interest or penalty must be due to reasons attributable to the tax payer (ex: insolvency, instances of defaulting, absconding etc).
- Summary assessment under this Section is not a substitute for assessment getting time barred.
- Further, mere possibility of non-payment cannot be a grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability.

ASSESSMENT OF UN REGISTERED PERSONS

- As per the provision of Rule 100(3) the summary assessment order should be in FORM GST ASMT-16.
- The section allows the person who is assessed and is served with the order so passed, to come forward and make an application in accordance with Rule 100(4) in FORM GST ASMT-17 to the Additional / Joint Commissioner, who will examine the same and if the Additional/ Joint Commissioner is satisfied, the summary assessment order may be withdrawn.
- Besides, the Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in Section 73 or as the case may be Section 74 for determination of taxes not paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised if he considers that such order is erroneous.
- From the above, it appears that every summary assessment order so withdrawn under sub-Section (2), may be followed by a notice under Section 73 or as the case may be section 74 of the Act.
- On receipt of application the proper officer has to pass the order of withdrawal or, rejection of the application in accordance with Rule 100(5) in FORM GST ASMT-18.



CMA B Mallikarjuna Gupta

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Certified Product Manager from Indian School of Business

Over two decades of experience in the areas of Taxation, GST, Product Management, Brand Management, Finance, Accounting, Sales, Operations, Marketing, Project Accounting ERP & BI Implementation. Worked for Oracle, Infor, Logo, Systime & Dempo Group. Designed & implemented a Costing system for a Steel Plant, Biaxially Oriented Polypropylene (BOPP) & Upholstery plant.



AWARDS/RECOGNITIONS

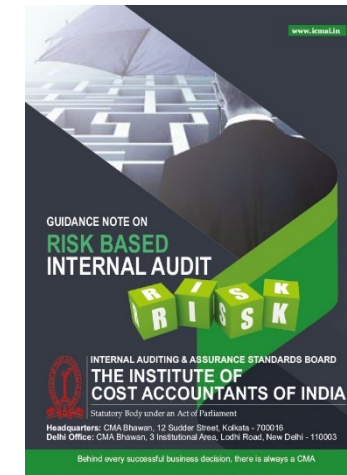
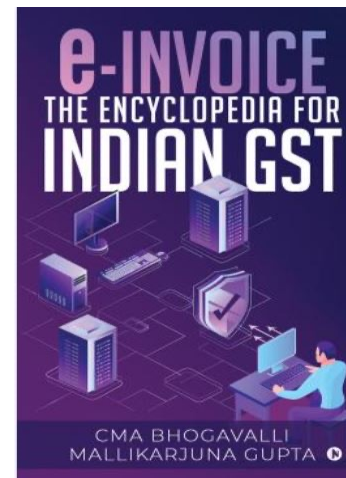
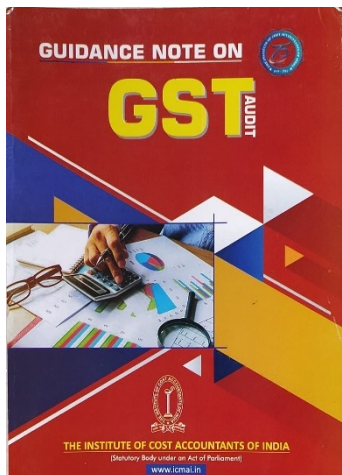
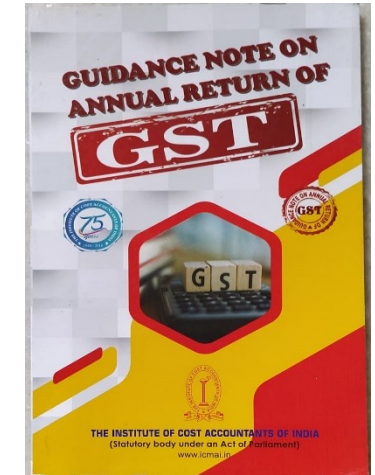
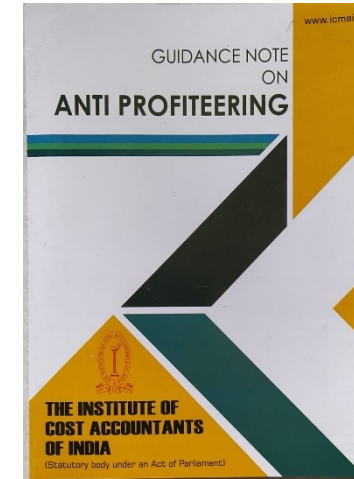
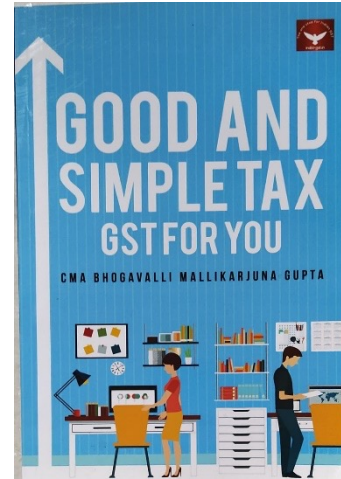
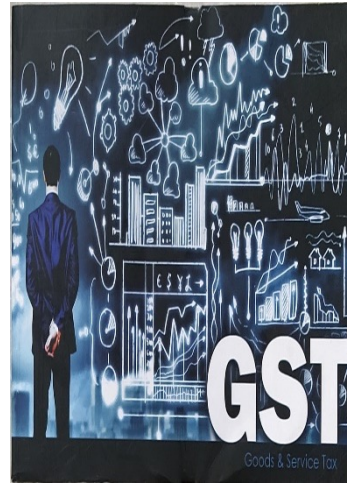
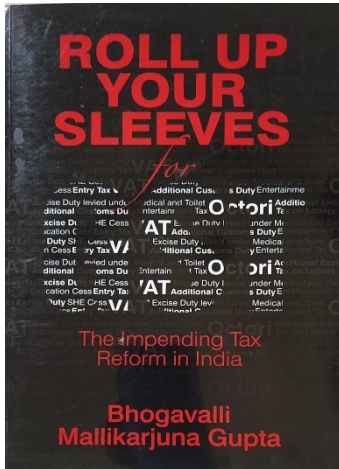
- Conferred the Indian Achievers' Award 2021 - In Recognition of Outstanding Professional Achievement & Contribution in Nation Building
- GUINNESS WORLD RECORDS title holder as a team member for the "Most people running up a single mountain."
- Selected one among the 100 Digital Influences for 2020 by [YourStory](#)
- His podcasts find place in the top 10 Taxation podcasts in India for 2021
- Recognized by the Cyberabad Police for Traffic Volunteering for 100 hours & for conducting drunken drive.

Director - Indirect Taxes, Manohar Chowdhry & Associates, Chartered Accountants

Member of

- GST Grievance Redressal Committee – Telangana
- Task Force Member – MSME & Startups at Institute of Cost Accountants of India, Kolkata
- Expert Member of Technology Development Fund Scheme of DRDO
- Co-Chair for Customs & GST Committee at Federation of Telangana Chamber of Commerce & Industry (FTCCI)
- Member - Regional Advisory Committee, Dattopanth Thengadi National Board for Workers Education and Development, Ministry of Labour and Employment, Govt. of India.
- Resource Person/Faculty - Institute of Cost Accountants of India, Regional Training Institute (CAG Auditors), National Academy of Customs, Indirect Taxes & Narcotics, Indian Navy, and National Institute for Micro Small and Medium Enterprises (NI-MSME)
- Served as a Member at National Council for Indirect Taxes at ASSOCHAM and at the Institute of Cost Accountants of India at the Central Council Level & Chapter Level

Books – Authored/Co Authored





presented to

CMA Bhogavalli Mallikarjuna Gupta

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