

Provisions under GST
ASSESSMENT & AUDIT

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ASSESSMENT UNDER GST

ASSESSMENTS UNDER GST

TYPES OF ASSESSMENT

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SELF-ASSESSMENT (Section 44)

- Purpose
 - Ease of assessment procedure for *Registered* taxable person
- Procedure
 - Registered taxable person shall
 - himself assess the taxes payable under this act; and
 - furnish a return for each tax period (Returns u/s 27)

Explanation: That on return of good within 06 months from the date of invoice, the tax payable shall be equal to the amount of ITC claimed.

Illustration: Goods worth Rs.1000 are supplied by A to B on 15th May, 2017 on which SGST of Rs.110 and CGST of Rs.100 are charged. B returns goods worth Rs.500 from this consignment to A on or before 14th November, 2017 then B will have to add Rs.55 and Rs.50 on account of SGST and CGST respectively to his output liability in respect of the month of November, 2017.

PROVISIONAL ASSESSMENT (Section 44A)

➤ Purpose

- Provisional assessment applies where the taxable person is unable to determine the value of goods/ services; or determine the rate of tax applicable on supply

➤ Procedure

- Taxable person will submit a request to the proper officer in writing giving reasons for payment of taxes on provisional basis; upon receipt of which proper officer may allow payment of tax on provisional basis at such rate or value as specified by him;
- Taxable person is required to execute a bond and may also be required to execute surety or security as proper officer deems fit.
- Proper officer shall pass the final assessment order within the period not exceeding 6 months; period may be extended either by Joint/ Additional commissioner (a further period not exceeding six months) or by Commissioner (for such further period as he may deem fit) on sufficient cause and for reasons recorded in writing.

➤ Interest

- Interest applicable on additional tax amount payable pursuant to the final assessment order, at the rate specified in section 36(1). In case of tax refund, interest on such refund shall be paid as provided under Section 39.

SCRUTINY ASSESSMENT (Section 45)

Cases where satisfactory explanation to discrepancies are submitted

➤ Purpose

- Scrutiny of a filed return (and related particulars) by a proper officer to verify its correctness

(Related particulars would primarily mean invoice wise details of inward and outward supplies along with commodity codes.)

➤ Procedure

- In case of discrepancy, proper officer shall inform the taxable person of such discrepancies noticed and seek his explanation
- In case explanations are found acceptable, the taxable person shall be informed and no further action is taken

SCRUTINY ASSESSMENT (Section 45)

Cases where no satisfactory explanation to discrepancies are submitted

- If:
 - satisfactory explanation is not furnished within 30 days of the date of informing the taxable person (or further period as permitted to him); or
 - taxable person accepts discrepancy but fails to take corrective action within a reasonable period
 - proper officer may initiate appropriate action including those under Section 49 (**Audit** by Tax Authority), 50 (**Audit by CA** or Cost Accountant) or Section 60 (Power of **inspection**, search and seizure), or
 - proceed to determine tax under section 51A(6) (determination of tax not paid/ short paid/ erroneously refunded etc – **Non Fraud case**) or Section 51B(6) (determination of tax not paid/ short paid/ erroneously refunded etc – **Fraud case**)

BEST JUDGEMENT ASSESSMENT

Assessment of non filers of returns (Section 46)

➤ Purpose

- To assess the tax liability of taxable person who failed to furnish the prescribed return under Section 27, 31 or 32

➤ Procedure

- Where registered taxable person fails to furnish the return,
 - the proper officer may after allowing a period of **15 days** from the date of notice,
 - proceed to assess the tax liability to the best of his judgment
- Tax liability assessment by proper officer shall take into account all the relevant material available or gathered by such officer;
- Time limit for issue of assessment order:
 - Non Fraud case: As specified in Section 51A(7), or
 - Fraud Case: Section 51B(7)
- Assessment order (made under Section 46) shall be deemed as withdrawn where the taxable person furnishes a valid return within 30 days of service of the said assessment order.

BEST JUDGMENT ASSESSMENT

Assessment of unregistered persons (Section 47)

- Purpose
 - To assess tax of the taxable persons who has failed to obtain registration despite of being liable to be registered in terms of Schedule III of the Act, the proper officer shall conduct assessment for the period during which the assessee remains unregistered.
- Procedure
 - Show cause notice to be issued
 - Reasonable opportunity of being heard to be allowed to the said taxable person
 - Proper officer to assess the tax liability to the best of his judgment
 - Limitation: Assessment order to be *issued* within 5 years from the due date of filing the annual return of the year to which the tax not paid relates.
- It being best judgment assessment, as history suggests, there are chances that the judgment be vindictive and capricious.

SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

(Section 48)

- Purpose
 - Tax assessment in special cases to protect the interest of revenue
- Procedure
 - Proper officer may
 - on any evidence showing a tax liability of a person coming to his notice;
 - with previous permission of Additional/ Joint Commissioner;
 - proceed to assess the tax liability of such person
- Premise:
 - Proper officer can issue an assessment order if he has sufficient ground that any delay will adversely affect the interest of revenue
 - *In case taxable person is not ascertainable and the liability pertains to goods, the person in charge of such goods shall be deemed to be the taxable person.*
- Withdrawal of order:
 - If on application by the taxable person or *suo moto* Additional/ joint commissioner considers that order under section 48 is erroneous, he may withdraw such order and follow procedure laid in Section 51 (Determination of tax – non fraud .

Athena Comments

- Basis of summary assessments are generally vague – “*on any evidence showing a tax liability of a person coming to his notice*”
- Such provisions are subject to gross abuse by the authorities to arm twist
- No requirement of:
 - Confronting the material to the assessee
 - issuing any notice to the assessee
 - Hearing the assessee
 - The consequent assessments are generally arbitrary
- Illustration
 - AO says - Purchases are more than sales
 - Add GP of 25% to purchases
 - And assess the tax
 - Demand raised
 - Assessee appeals – partial stay
 - Balance to be paid or ***extorted*** from the bank account

AUDITS UNDER GST

AUDITS UNDER GST

AUDIT BY TAX AUTHORITIES (S. 49)

- Audit prescribed for all assesses. To be conducted:
 - for businesses and at frequencies to be prescribed;
 - at business premises or at office of taxable person;
 - with prior intimation of at least 15 days before initiation of audit
- Manner of Audit:
 - To be carried out in a transparent manner and to be completed within 03 months form the date of commencement of audit, i.e., from the date of making information available by the assessee.
 - Period may be increased upto a further period of 06 months for reasons to be recorded in writing.
 - During audit facility for verification of books of accounts or other documents may be sought for and information and assistance may be required for timely completion of audit.
- On conclusion of audit:
 - Without delay, findings of audit, rights and obligations of taxable person and reasons for findings to be informed
 - If detected that tax remains unpaid/ short paid/ erroneously refunded or ITC erroneously availed, action under Section 51 may be initiated.

AUDITS UNDER GST

SPECIAL AUDIT (S. 51)

- **Special Audit**
 - To be conducted by external agencies, i.e., Chartered Accountants and Cost Accountants nominated by the Commr.
 - It is in addition to audit under Section 49.
- **To be initiated when Deputy/ Asst. Commr. due to:**
 - nature and complexity of a case; and
 - considering the interest of the revenue
 - find that the value is not declared correctly or credit is not availed within normal limits;
The concerned officer may direct such taxable person in writing to get his records and books of accounts verified by nominated professionals.
- **Nominated professional**
 - Shall submitted a report within 90 days to the Deputy/ Asst. Commr. (time period may be extended on application)
 - Proper opportunity of being heard is to be granted to the taxable person, prior to using the information gathered for using in any proceeding under the Act or rules made thereunder.
 - In case of detection of tax not paid or short paid or erroneously refunded or input tax credit erroneously availed action under Section 51 may be initiated.
 - Expenses for audit to be determined and paid by the Commissioner.

DEMANDS AND RECOVERY

DEMANDS AND RECOVERY UNDER GST

Determination of tax not paid or short paid or erroneously refunded

- Section 51A in cases where there is **no invocation of fraud/suppression/mis-statement** etc and Section 51B where the **ingredients of fraud/suppression/mis-statement etc are present.**
- **Section 51A**
 - SCN shall be issued to the person who has not paid tax/short paid or erroneously refunded under Section 51 A & 51 B.
 - If before Notice tax and Interest is paid: No notice and no penalty
 - After notice within 30 days tax and interest is paid : No penalty or further proceedings
 - Order - Maximum Penalty : 10% of tax or Rs 10,000 whichever is higher
 - The relevant date for issuance of SCN is the date of filing of annual return.

- **Section 51 B**

- Fraud or willful-misstatement or suppression of facts to evade tax
- Tax + Interest + Penalty to be levied
- Before notice, if tax , interest and penalty equivalent to 15% is paid : No notice
- After notice within 30 days tax ,interest and penalty equivalent to 25% is paid : No further proceedings
- After 30 days of communication of order tax ,interest and penalty equivalent to 50% is paid : No further proceedings

Tax collected but not deposited with the Central or a State Government (Section 52)

- Notice to be issued.
- Principles of natural justice to be followed and order to be issued
- It is to be noted that such order has to be invariably issued within 1 year of date of issue of notice.
- However there is no time limit for issue of show cause notice. Thus, in such cases duty can be recovered even after ten years.
- Once notice is issued, the order has to be passed within 1 year from the date of issue of notice.

Modes of recovery of tax available to the proper officer

- The following options are available to the proper officer:
 - a) The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person;
 - b) The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person;
 - c) The proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;

Contd...

- d) The proper officer may, on an authorization by the competent authority, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; if the dues remains unpaid for a period of thirty days after any such distress, he may cause the said property to be sold and with the proceeds of such sale may satisfy the amount payable and the costs including cost of sale remaining unpaid and pay the surplus amount, if any, to such person;
- e) The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and on receipt of such certificate, the Collector shall proceed to recover from such person the amount specified as if it were an arrear of land revenue.

Payment of tax and other amount in installments (Section 55)

- Cases other than self-assessed tax.
- The Commissioner/Chief Commissioner may extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 36 with such restrictions and conditions as may be prescribed.
- However, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and recovered without any further notice.

QUESTION & ANSWER SESSION

ANY QUERIES ??

THANK YOU

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