

Assessment Under GST Act

RJA

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Rajput Jain & Associates

Chartered Accountant





Assessment

- ▶ Section 2(11) of CGST Act defines assessment as determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

❑ Types of Assessment

- ▶ Self Assessment
- ▶ Scrutiny of Returns
- ▶ General Assessment
- ▶ Provisional Assessment
- ▶ Assessment of non-filers of return
- ▶ Assessment of unregistered person
- ▶ Summary Assessment

Administration under GST Act

- ▶ Each assessee will be administered by only one authority
- ▶ Assesses with turnover > 1.5 crores - Assessed by Centre & States in the ratio 50:50 respectively.
- ▶ Assesses with turnover < 1.5 crores – Assessed by Centre & States in the ratio of 10:90 respectively

Administration under GST Act

- ▶ Section 3 of CGST Act - The Government shall appoint following classes of officers:
 - ▶ Principal Chief Commissioner of Central tax
 - ▶ Chief Commissioner of Central tax
 - ▶ Commissioner of Central tax
 - ▶ Additional Commissioner of Central tax
 - ▶ Joint Commissioner of Central tax
 - ▶ Deputy Commissioner of Central tax
 - ▶ Assistant Commissioner of Central tax
 - ▶ Any other class of officers as it may deem it
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- ▶ Officers appointed under Central Excise Act, 1944 shall be deemed to be officers under provisions of GST Act

Administration under GST Act

- ▶ Officers appointed under the SGST act or UTGST Act are authorized officers for the purposes of CGST Act.
- ▶ Where any SGST or UTGST officer has initiated proceeding on a subject matter, no proceeding shall be initiated by the proper officer under CGST Act.
- ▶ Where any CGST officer issues an order under CGST Act, he shall also issue an order under SGST Act or UTGST Act
- ▶ Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by a CGST officer, shall not lie before SGST or UTGST officer.
- ▶ CGST Commissioner may extend time limit to file return. Any extension notified by SGST or UTGST officer shall be deemed to be extended for CGST also.

Self Assessment

- ▶ Every registered taxable person shall himself assess the tax payable and furnish return for each tax period.
- ▶ Hence, every registered taxable person would be required to assess his tax dues in accordance with the provisions of GST Act and report tax dues to the tax administrations, by filing periodic tax returns.
- ▶ The principles of self-assessment are presently contained in Central Excise Law, Service Tax Law as well as VAT Laws.

Provisional Assessment

- ▶ Provisional Assessment allowed in the following two cases:
 - ▶ Inability to determine the value of goods/ services
 - ▶ Inability to determine rate of tax
- ▶ For issues like time of supply, supplies to be treated as “supply of goods” or “supply of services”, whether ITC is available or not, provisional assessment cannot be undertaken.
- ▶ Whether question as to eligibility of exemption can be reason for provisional assessment ?
- ▶ Whether question as to classification of goods/ services can be reason for provisional assessment ?

Provisional Assessment

- ▶ Dispute relating to the duty of excise payable on any goods;
 - ▶ The value of the goods for the purposes of assessment;
 - ▶ A dispute as to the classification of goods;
 - ▶ Whether those goods are covered by an exemption or not;
 - ▶ Whether the value of goods for the purposes of assessment is required to be increased or decreased;
 - ▶ The question of whether any goods are excisable goods or not;
 - ▶ Whether a process is a manufacturing process or not, so as to attract levy of excise duty,
- ▶ *It applies to cases where, for the purposes of assessment, question arises directly and proximately as to the rate of duty or value of the goods.”*

Provisional Assessment

- ▶ Provisional Assessment provisions under GST Law are broadly drafted on the lines of the current provisions of Central Excise and Service Tax law. A provisional assessment is permitted under Central Excise Act, 1944 & also under the Finance Act 1994.
- ▶ Provisional Assessment available on filing written application and consequent order by proper officer
- ▶ Provisional Assessment allowed on execution of bond (with surety or security) for payment of difference between tax provisionally assessed and finally assessed;
- ▶ Proper Officer to pass order within 90 days from receipt of request by assessee.

Provisional Assessment

- ▶ Final Assessment order to be passed within six months of Provisional Assessment order.
- ▶ Period of six months extendable for further six months by Joint Commissioner/ Additional Commissioner and for a further period of four years by the Commissioner on show of sufficient cause.
- ▶ Difference between tax paid as per provisional assessment and tax assessed under final assessment to be paid/ refunded along with interest.
- ▶ Interest paid shall be calculated from the first day after the due date of payment of tax till actual date of payment.
- ▶ Where registered person becomes entitled to refund subsequent to order of final assessment, interest shall be paid on such refund amount.

S.No	Particulars	Details
1	Prescribed form for application for provisional assessment	GST ASMT-01 to be filed online on GST Common Portal
2	Issue of Notice to furnish additional information	GST ASMT-02
3	Reply to Notice for additional information	GST ASMT-03
4	Order allowing payment of tax on provisional basis. Order to indicate the rate of tax/ value of supply or both. Order to also indicate bond amount and security upto 25% of bond amount	GST ASMT-04

Provisional Assessment

5	Execute bond by assessee along with security in the form of bank guarantee. Bond furnished under CGST applicable for SGST also.	GST ASMT-05
6	Notice for final assessment	GST ASMT-06
7	Order of final assessment	GST ASMT-07
8	Application for release of bank guarantee	GST ASMT-08
9	Order for release of bank guarantee. Order to be issued within 7 working days from receipt of application.	GST ASMT-09

Provisional Assessment

Scrutiny of Returns

- ▶ Section 61(1) - Proper officer to scrutinize the return and related particulars furnished by the registered person and inform him of the discrepancies and seek explanation thereto.
- ▶ In case the explanation is found acceptable, the registered person shall be informed and no further action shall be initiated.
- ▶ If no satisfactory explanation provided within 30 days or such further period as may be permitted by proper officer or upon acceptance of discrepancy no corrective action is taken in subsequent month return, the proper officer may initiate appropriate action including the following:
 - ▶ Audit by Tax Authorities
 - ▶ Special Audit
 - ▶ Inspection, Search & Seizure
 - ▶ Determine tax and other dues under Section 73 or 74.

S.No	Particulars	Details
1	Notice to be issued to assessee upon discovery of discrepancy	GST ASMT-10
2	Reply to Notice of Discrepancy	GST ASMT-11
3	Intimation in case reply found satisfactory	GST ASMT-12



Scrutiny of Returns

Scrutiny of Returns

- ▶ Unlike the present State and Central indirect tax statutes, provisions relating to scrutiny of returns has been introduced for the first time in any Indirect Tax Law.
- ▶ Section 61 empowers the proper officer to scrutinize return to verify its correctness.
- ▶ This provides for a preliminary assessment before the actual full assessment under Section 73 or 74 of the CGST Act.
- ▶ It appears that this provision has been brought about in the same lines as summary assessment under the Income Tax Act, 1961.
- ▶ Under Income Tax a return filed a taxpayer is assessed electronically for any arithmetical error or apparent incorrect claim and an intimation of the same is sent to the taxpayer.
- ▶ This provision can be linked with Section 149 of CGST Act – GST Compliance Rating. Taxpayers will be assessed on some pre-defined parameters and given compliance rating score. Reports based on such score will be used to determine returns to be scrutinized.

GST Compliance Rating Score

- ▶ Every registered person may be assigned a GST compliance rating score by the government
- ▶ GST compliance rating score may be determined based on such parameters as may be prescribed.
- ▶ GST compliance rating score may be updated at periodic intervals and communicated to the registered person.
- ▶ GST compliance rating score may also be placed in public domain.

General Assessment

- ▶ General assessment provisions appears to be borrowed from Central Excise/ Service Tax laws.
- ▶ General assessment provisions are broadly categorized under the two different heads:
 - ▶ Assessment of tax not paid, short paid, erroneously refunded, credit wrongly availed/utilized **without** guilty intention on taxpayer part.
 - ▶ Assessment of tax not paid, short paid, erroneously refunded, credit wrongly availed/utilized **with** guilty intention on taxpayer part.

Meaning of the word 'suppression'

- ▶ Section 74 provides for issuance of notice in case of fraud, wilful-misstatement, suppression of facts to evade tax.
- ▶ Explanation 2 to Section 74 - 'Suppression' shall mean non declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document, or failure to furnish any information on being asked for, in writing, by the proper officer.
- ▶ Will non declaration, without guilty mind, entail higher penalties and limitation period ?

General Assessment

	Assessment without mens-rea	Assessment with mens-rea
Issue of Notice	<p>Assessment has to be made by issuance of notice specifying tax, interest and penalty leviable</p> <p>Notice shall be issued at least 3 months prior to limitation period</p>	<p>Assessment has to be made by issuance of notice specifying tax, interest and penalty leviable</p> <p>Notice shall be issued at least 6 months prior to limitation period</p>
Payment before Issuance of Notice	<p>No notice shall be served in case tax and interest paid before issuance of notice</p>	<p>No notice shall be served in case tax, interest and 15% penalty paid before issuance of notice</p>
Payment within 30 days of Issuance of Notice	<p>Deemed conclusion of demand in case tax along with interest paid within 30 days of the issue of notice</p>	<p>Deemed conclusion of demand in case tax, interest and 25% penalty paid within 30 days of the serving of notice</p>

General Assessment

	Assessment without mens-rea	Assessment with mens-rea
Payment within 30 days of the serving of order	No specific provision. Taxpayer can be made liable to penalty upto 10% of tax or INR 10,000 whichever is higher	Deemed conclusion of demand in case tax, interest and 50% penalty paid within 30 days of the serving of order
Limitation Period	Assessment order can be passed within 3 years from due date of filing of annual return of concerned year	Assessment order can be passed within 5 years from due date of filing of annual return of concerned year
Maximum Penalty	INR 10,000 or 10% of disputed tax, whichever is higher	Equivalent to the disputed tax

Adjudication of Penalty

- ▶ Section 73 read with Section 74— Provision provides for issue of notice and adjudication only in respect of non-payment, short payment of tax.
- ▶ Can adjudication be done in respect of penalty? Section 83A of the Finance Act, 1994.
- ▶ Section 127 – Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 129 or Section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being to such person

Conclusion of Penalty proceedings

- ▶ Explanation 1 of Section 74 – where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.
- ▶ Section 122 – Penalty for certain offences
- ▶ Section 125 – General Penalty
- ▶ Section 129 – Detention, Seizure and Release of goods
- ▶ Section 130 – Confiscation of goods & conveyance and levy of penalty

Subsequent Notices

- ▶ Section –74 &73 Provision introduced to provide for summary notice in respect of subsequent demand periods.
- ▶ This provision has its roots in court rulings wherein summary notices giving reference to original notice were held to be invalid on grounds of principles of natural justice.
- ▶ Subsequent notice has to justify allegation of mens-rea separately for each subsequent notice.

Recovery of Self Assessed Tax

- ▶ Section 73(1B) - In a case where the amount of service tax payable has been self-assessed in the return, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes, without service of notice.
- ▶ VAT Laws generally have provision deeming self assessed returns filed by the Taxpayer as assessment order of the Taxpayer.
- ▶ Section 75(12) of the CGST Act provides that where any amount of self assessed tax along with interest remains unpaid, the same shall be recovered under the provision of the CGST Act.

Mens Rea not established

- ▶ Section 75(2) – Provision empowers the proper officer to determine tax payable for the normal period of three years in case the notice is held to be invalid for the reason that charges of mens-rea has not been established.
- ▶ Prior to insertion of similar provision in Service Tax Law, in cases where appellate authority/court held the notice to be invalid on grounds of absence of mens-rea, assessee would argue the notice to be invalid even for normal period of limitation.
- ▶ The above provision has been introduced to take care of such situations.

Limitation Period

- ▶ Limitation Period – Adjudication order shall be issued within Three/ Five years of the actual date of the annual return.
- ▶ What is the meaning of the word 'issue'?
- ▶ Date of Order / Date when Order is beyond control of officer / Date when Order is received by the assessee?
- ▶ Bachhittar Singh vs. State of Punjab 1963 AIR 395 SC – Order becomes effective when communicated to parties. Date of communication of order is the date of the order.

Personal Hearing

- ▶ Section 75(5) – Provision for grant of adjournment on show of sufficient cause. Provision restricts that adjournment shall not be granted more than three times.
- ▶ Illustration: A SCN was issued to Taxpayer for demand of Tax, Interest and Penalty. Personal hearing notice issued with three dates of hearing say 02.05.2017, 05.05.2017 and 10.05.2017.
- ▶ Does the above personal hearing notice suffice three adjournment limit provided under the GST Act?
- ▶ Meenakshi Associates Pvt. Ltd. Vs. CCE 2009 (245) ELT 362 (Tri-Del)

Interest Compulsory

- ▶ Section 75(9) – Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining tax liability
- ▶ This provision has been brought in light of continuous litigation by assessee pleading no interest when not specifically mentioned in the order.
- ▶ Also, disputes arise in respect of interest from the date of order till actual date of payment/ recovery of tax.
- ▶ Decisions to hold that interest is compensatory in nature. It shall be levied even if not specifically mentioned in the order. Interest is compulsory in nature and is to be paid for deprivation of money.
- ▶ Ferro Alloys Corporation Ltd. v. A.P. State Electricity Board, AIR 1993 SC 2005 paragraph 125

Exclusion of Time

- ▶ Section 75(11) – Provision provides that in case of decision by First Appellate Authority, Tribunal or High Court in some other proceedings prejudicial to interest of revenue, time between decision of First Appellate Authority, Tribunal, High Court and decision of Tribunal, High Court, Supreme Court shall be excluded.
- ▶ Similar provision not present under Service Tax Law. This is for the reason that limitation period in Service Tax Law is for issue of notice (not issue of order).
- ▶ Other VAT Acts provide for similar provision – Section 34(2) of DVAT Act – Notwithstanding subsection (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of Appellate Tribunal or Court where assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or Court.

Beyond SCN

- ▶ Section 75(7) – The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on grounds other than the grounds specified in the notice.
- ▶ This provision has its roots in well settled legal principle that an assessment order shall not travel beyond the SCN.
- ▶ Kantilal Parekh v. Union of India 2003 (158) ELT 678 (Bom)
- ▶ Contradiction between Section 75(7) & Section 75(9) of CGST Act

Natural Justice

- ▶ Section 75(6) – The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- ▶ Section 75(4) – An opportunity of hearing shall be granted where a request is received in writing or where an adverse decision is contemplated.
- ▶ Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice.

Assessment – Not invalid on certain grounds

- ▶ Section 128(1) – Assessment shall not be invalid merely by reason of any mistake, defect or omission, provided in substance and effect it is in conformity with law.
- ▶ Illustration-1: Non-mention / Wrong mention of section in the assessment notice / order?
- ▶ Illustration-2: Assessment notice/ order in incorrect format?
- ▶ Illustration-3: Assessment order / notice issued by wrong officer?
- ▶ Illustration-4: Assessment order delayed by one day beyond limitation period?

Assessment – Not invalid on certain grounds

- ▶ Section 160(2) – The service of any notice, order or communication shall not be called in question if the same has already been acted upon by the person to it is issued.
- ▶ Section 160(2) – The service of any notice, order of communication shall not be called in question if the same is not called in question at the earliest proceeding.

Double Jeopardy

- ▶ Article 20 of the Constitution of India - No person shall be prosecuted and punished for the same offence more than once
- ▶ Section 75(13) – Where any penalty is imposed under Section 73 or Section 74, no penalty for the same act or omission shall be imposed on the same person under any other provisions of this Act.

Assessment is pursuance of Court Order

- ▶ Section 75(3) – Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, such order shall be issued within two years from the date of communication of the said direction.
- ▶ Whether such order can be passed beyond the limitation period provided under Section 73 and Section 74.
- ▶ Other VAT Acts provide for similar provision – Section 34(2) of DVAT Act – Notwithstanding subsection (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of Appellate Tribunal or Court where assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or Court.

Inter-Adjustment between CGST + SGST/UTGST & IGST

- ▶ Section 77(1) – A registered person who has paid CGST + SGST or CGST + UTGST on a transaction considered as intra-state supply, but which is subsequently held to be inter-state supply, shall be refunded the wrong tax paid.
- ▶ Section 77(2) – A registered person who has paid IGST on a transaction considered by him as inter-state, but which is subsequently held to be an intra-state supply, shall not be required to pay interest on CGST+ SGST or CGST + UTGST
- ▶ Similar disputes arose between payment of VAT vs. CST.
- ▶ Hindustan Unilever Ltd. Vs. Deputy Commissioner of Commercial Taxes 2014-TIOL-1781-HC-KOL-VAT (Favour). Cotmac Private Ltd. Vs. Commercial Tax Officer (20) STC 20 (Against)

Assessment of Non filers of Return

- ▶ Specific provision for making best judgment assessment of non-filers of return (registered persons) on the basis of relevant materials available on record. Assessment can be done if notice for non-filing return issued.
- ▶ No requirement for establishing non-payment, short-payment, wrong availment or utilization of credit, as required under general assessment section 51 of the GST Law.
- ▶ Assessment order to be issued within 5 years from the date of Annual return of that particular year. Assessment order to be issued in GST ASMT-13.
- ▶ **Assessment without issuance of show cause notice? Open question of law.** No form for notice prescribed.
- ▶ This is evident from the provision that best judgment assessment shall be withdrawn in case the taxpayer files a valid return within 30 days of the best judgement assessment order.
- ▶ However the liability to interest and late fee amount shall continue

Assessment of Unregistered Persons

- ▶ Section 63 specifically empowers the officers to make assessment on best judgment on the event of
 - ▶ Failure to obtain registration, but tax was due
 - ▶ Registration was cancelled but tax was due
- ▶ Assessment order to be issued within 5 years from the date of Annual return of that particular year.

Assessment order in GST ASMT-15.

- ▶ It has been provided that no order under this section shall be issued by the proper officer without giving an opportunity of being heard. Notice in GST ASMT-14 giving 15 days time to reply.

Summary Assessment

- ▶ Summarily assessment to protect the interest of the revenue.
- ▶ Such assessment can be made only on the pretext of adverse effect on the interest of the revenue in case of delay in making the assessment.
- ▶ On an application made by the taxable person within thirty days from the date of receipt of order passed, if the Proper Officer considers that such order is erroneous, he may withdraw such order and follow the procedure laid down. Application in GST ASMT-17 and Order for accepting/ rejecting application in GST ASMT-18.
- ▶ Assessment without issuance of show cause notice? Open question of law. No form for Notice prescribed under the Rules.

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