



Practical Insights To Handle GST Litigation

World Trade Centre Mumbai

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Scrutiny of Returns

Legal Provision

“61. (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.”



Scrutiny of Returns

Purpose

- A Tax officer will thoroughly check the GST return of a particular taxpayer based on certain risk parameters, to verify its correctness.
- **If a Tax Officer finds any errors, he/she will issue a scrutiny notice to the registered taxpayer demanding an explanation.**
- The main objective behind a scrutiny assessment is to verify the correctness of details submitted in GST returns like eligible Input Tax Credit (ITC) v/s actual claimed, tax payable v/s tax paid, claimed ineligible exemptions or ineligible ITC, etc. There are risk parameters pre-defined for a tax officer to decide whether scrutiny notice needs to be issued.
- If these indicate a high risk of default or fraud, then the tax officer can proceed to this assessment.

Factors Triggering Scrutiny

- Mismatch of Tax Liability Form GSTR1 vis a vis Form GSTR 3B.
- Mismatch in Input Tax Credit Availed etc.



Scrutiny of Returns

General Discrepancies Highlighted during Scrutiny:

- Short Payment of Tax on Outward Supply.
- Short Payment of Tax on Inward Supply (RCM).
- Input Tax Credit Availed in Excess.
- Input Tax Credit found Reversible.

Forms

Form ASMT-10 - A scrutiny notice is issued in intimating discrepancies in GST return along with tax, interest and penalty if any.

Form ASMT-11 – Submission of Reply – Acceptance or Denial by providing adequate supporting documents.

Form ASMT – 12 - If the reply satisfies the Tax Officer, the taxpayer is intimated and the proceedings are dropped without any further action (an order of acceptance of reply).



Sample Replies

General Discrepancies Highlighted during Scrutiny:

- Short Payment of Tax on Outward Supply.

If Accepted:

In the instant case, the Company has discharged CGST/SGST/IGST Liability amounting to INRonJanuary 2023. Please find attached details of the payment of INRin FORM GST DRC – 03 dated January 2023 enclosed herewith as Annexure 1

- Input Tax Credit found Reversible

If Denied:

In the instant case, the Company humbly submits that ITC amounting to INR.... (IGST) was not availed by the Company and hence it is not subject to reversal.



Audit in GST Regime

Legal Provision

Section 2(13) of CGST Act, 2017 defines 'Audit' as "the examination of records, returns and other documents maintained or furnished by the registered person under this Act or Rules made there-under or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made there- under".

Objective

The objective of audit is to **measure the level of compliance of the taxpayer** in the light of the provisions of the GST Law.

The activity of Audit by the department **is to examine the records, returns and other documents maintained or furnished by the taxpayer in order to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed**, and to assess compliance with the provisions of the GST Law.

0.05% to 2% (Approximately) of the Registered Tax Payers are under Scrutiny under the provisions of the GST Law in India.

Audit in GST Regime

Time Frame

- The taxpayer should get an intimation at least fifteen days in advance intimating the date of audit.
- All audit findings are discussed with taxpayer by the auditor.
- Preliminary findings of audit are conveyed to the taxpayer and his views/comments are taken on record.
- The taxpayer is conveyed in writing a choice to make the payment of tax short paid / not paid with waiver of show cause notice.
- The final audit findings are informed to the taxpayer within thirty days along with his rights and obligations and the reasons for such findings.
- As per Section 65 of the CGST Act, 2017 the officers are authorised by the Commissioner to conduct audit after prior intimation to the registered taxpayer, either at the business premises of the taxpayer or office. The audit needs to be completed within a period of three months from the date of commencement and can be extended for a further period of six months by the Commissioner.
- On conclusion of audit, the registered taxpayer whose records were audited is informed within thirty days about the findings, his rights and obligations and the reasons for such findings.

Audit in GST Regime

Forms

- **FORM GST ADT-01** - Notifying the registered taxpayer about the dates for conducting the Audit.
- **FORM GST ADT-02** - Informing the findings of audit to the registered person.

Information/Documents asked during GST Audit

- Books of Accounts.
- Sales Ledger.
- Purchase Ledger (Copies of Invoices).
- Input Tax Credit Ledger.
- Copies of Agreements (Sales)/Export Invoices/Copies of FIRC's etc.
- Copies of Purchase Orders.
- Reconciliation of Turnover (Forms GSTR 1 vis a vis Form GSTR 3B vis a vis Books of Accounts vis a vis Form 26AS).
- Reconciliation of Input Tax Credit (Ledger vis a vis Form GSTR 2A/2B).
- Details of Block Credit.
- Details of Reverse Charge etc. (Details of Self Invoices Raised).

It is to be remembered that Input Tax Credit is the heart and Soul of the GST Law.

Understanding of Adjudication in the Light of GST Law

Where it appears to the Proper officer that,

- Tax has not been paid or
- Short paid or
- Erroneously refunded, or
- ITC has been wrongly availed or utilised

Section 73 of the CGST Act 2017

For any reason other than

- Fraud, or
- Any wilful-misstatement, or
- Suppression of facts to evade Tax.

Section 74 of the CGST Act 2017

By reason other than

- Fraud, or
- Any wilful-misstatement, or
- Suppression of facts to evade Tax.

- Adjudicating Authorities Issue Show Cause Notice
- Registered Tax Payer Replies to the Show Cause Notice within the Time Period Specified in the Show Cause Notice.
- Adjudicating Authorities Pass an Order – In – Original (Speaking Order) along with Order (In Form GST DRC-07) either under Section 73 or under Section 74 of the CGST Act 2017.



Understanding of Application for Appeal in the Light of GST Law

- The Registered Tax Payer has the option to approach the Appellate Authority (if aggrieved by the Order of the Adjudicating Authority) within 90 Days from the date of Communication of the Order in Form APL-01.
- Pre-deposit of 10% of the remaining amount of tax needs to be paid before filing an appeal.
- Submission/Supporting Documents are submitted in course of hearing before the Appellate Authority.
- The GST Law provides an advisory time limit of one year from the date of filing of appeal to decide on the application for appeal to the Appellate Authority).
- The Appellate Authority conducts the necessary hearing and passes the Order.
- The Registered Tax Payer has the option to approach the Hon'ble High Court (as GST Tribunal has not yet been constituted)

Case Study 1

Forum - HIGH COURT OF JUDICATURE AT CALCUTTA CIVIL APPELLATE JURISDICTION APPELLATE SIDE

Case: Rumki Biswas. Vs. Senior Joint Commissioner, Commercial Taxes, Budge Budge Charge & anr.

Date: 1ST December 2022.

Issue: Imposition of Penalty (imposing 200% of the Tax) for not filling up Part B of the E-way Bill while transiting goods from the State of West Bengal to the State of Assam.

Decision Pronounced: “8. *The question would be whether this would tantamount to intention to evade payment of duty or with a view to clandestinely move certain goods. In our prima facie view, it does not appear so and could be considered to be a bona fide error...*

*11. In the result, the appeal is allowed along with connected application. Consequently, the writ petition stands allowed and the order passed by the appellate authority dated 5th June, 2022 is set aside and **the matter is remanded back to the appellate authority for fresh consideration on the aspect as to whether there was any wilful intention on the part of the appellant to evade payment of duty.***

12. The appellant would be entitled to place all the materials in support of their claim without unnecessary burdening the appellate authority with decisions of the various Courts, which we find is not required to be placed before the appellate authority as the matter is entirely factual.”

Case Study 2

Forum: Division Bench of the Hon'ble High Court of Calcutta.

Case: M/s. Mjunction Services Limited and another vs. The Additional Commissioner, State Tax, Large Taxpayer Unit, West Bengal and others (Through Video Conference).

Date: 8th September, 2021.

Issue: Rejection of Application for Refund as the same was filed beyond Due Date.

Decision Pronounced: *"In view of the aforesaid fair stand taken by the learned counsel for the State, the present appeal is disposed of with direction to the appellate authority to decide appeal filed by the appellant against the order of rejection of the refund application on merits after affording due opportunity of hearing to the parties."*



Case Study 3

Ministerial Representation

Forum: Ministry of Finance (Government of India) (Office of the Union Finance Minister/Office of the Chairman - Central Board of Indirect Taxes and Customs/Office of the Member (GST)/Tax Research Unit and Departments of Finance (at various States).

Issue: Increase in GST Rate (5% to 12%) on Textiles in course of the 45th GST Council Meeting held in Lucknow on 17th September 2021.

Submission: "On the basis of the above background (i.e. the impact analysis), the office of your good-selves may kindly note that the unjustified and unrationalized increase in GST (Tax Rate) of Jute Fabric Products classified under HSN Code 5310 may please be retained to GST (Tax Rate) of 5% for the higher purpose of survival of the MSMEs (who are presently burdened with huge financial pressure), securing the millions of jobs of the people engaged in the Indian Jute Industry (i.e. the farming families, the skilled and unskilled labour force) and for the overall growth of the country's economy with respect to GDP, Exports Foreign Exchange Reserves etc. The above reduction of GST (Tax Rate)) will help and accelerate in achieving the following objectives: Doubling Farmers Income - Full capacity Utilization of Mills - Employment generation due to greenfield capacity addition - To boost ancillary and tertiary units around jute mills - To boost capital machinery industry- No shortage of jute bags for govt. procurement.

Outcome: Rate of GST was reinstated to 5% in course of the 46th GST Council Meeting held in New Delhi on 31st December 2021.

Case Study 4

Forum: Directorate General of GST (Intelligence).

Issue: Issuance of Summons.

Queries Raised in Course of Proceedings:

- Books of Accounts.
- Sales Ledger.
- Purchase Ledger (Copies of Invoices).
- Input Tax Credit Ledger.
- Copies of Agreements (Sales)/Export Invoices/Copies of FIRC's etc.
- Copies of Purchase Orders.
- Reconciliation of Turnover (Forms GSTR 1 vis a vis Form GSTR 3B vis a vis Books of Accounts vis a vis Form 26AS).
- Reconciliation of Input Tax Credit (Ledger vis a vis Form GSTR 2A/2B).
- Details of Block Credit.
- Details of Reverse Charge etc. (Details of Self Invoices Raised).
- Details of Input Tax Credit of the Previous Year Availed in the Current Year.
- Adjustment of Excess Input Tax Credit Availed in the Current Year etc.

GST Registrations and Collection in India

Total Number of GST Registered Entities in India as on 30th November 2022 – 1,40,83,639

Serial No	States	Total No of Registrations
1	Uttar Pradesh	17,96,491
2	Maharashtra	16,87,631
3	Gujarat	11,40,210
4	Tamil Nadu	11,10,385
5	Karnataka	9,97,054
6	Rajasthan	8,40,408
7	Delhi	7,98,360
8	West Bengal	7,21,949
9	Telangana	5,21,112
10	Haryana	5,11,747

Total GST Collected – April 2022 to November 2022 (CGST + SCGT + IGST + Cess) - INR – 8,68,513.63 Crore.

INR 1,49,507 Crore GST Revenue collected for December 2022, records increase of 15% Year on Year.

Top Five States (GST Collection)

Serial No	States	GST Collection (In INR – In Crores)
1	Maharashtra	1,77,190.96
2	Karnataka	80,269.80
3	Gujarat	75,481.41
4	Tamil Nadu	69,224.71
5	West Bengal	38,454.29

29,444 Officers Work on GST Back Office



Thank You

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