

GST AUDIT BY TAX AUTHORITIES

HOW TO ACT PROACTIVELY & BEST APPROACH TO HANDLE THE AUDIT

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Introduction

- Section 65 of the CGST/SGST Act empowers the tax authorities to conduct the audit under GST Law. GST Department has started to knock on the doors of the Assessees and have started to serve the notices to conduct GST Audit.
- Now, it is time to awake on time and rectify the mistakes/ errors and correct the stands taken under GST Law prior to audit by GST department, specially where Assesses have not noticed errors due to non-filing of Annual Returns or non-applicability of GST Audit to be conducted by CA/CMA.
- It is good time to review the stands taken by the organisation during implementation of GST and compliances done under GST Law prior to knocking on the doors by GST Department for Departmental Audit. From our experience we can say that these reviews may also turn into huge tax savings to the organisation.

Arise! Awake! and not stop until the Goal is reached – Swami Vivekanand

10 KEY POINTS

TO BE CONSIDERED DURING DEPARTMENTAL GST AUDIT

Key Points

1. Ensure that the notice for conducting the audit has been issued by the Jurisdictional Department. Also ensure whether the issuing authority is empowered to seek the documents and information mentioned in the notice as per the sections invoked in the said notice.
2. Check whether any other parallel audit/ investigation has already been conducted or is being conducted for the same period by any other Indirect Tax Authority. Assessee may ask for waiver from similar enquiry.

Key Points

3. Ensure that each document that is to be submitted to the audit team is thoroughly vetted before submission. Always submit documents with covering letter as limitation period to complete the audit by department is linked with submission of all requisite records and other documents.
4. Present the data/ figures and its reconciliation carefully by explaining the differences in appropriate manner with legal and factual backing.

Key Points

5. While drafting the submissions, it is to be ensured that relevant facts are clearly mentioned and issue wise specific submissions are made. Keep all communications in writing with clear understanding.
6. Prior to accepting any observation of audit team, check the legal position of the same.

Key Points

7. Deposit the tax and interest on identified mistakes and error. Intimate to the audit department immediately through written communication (letter) about such deposited tax and interest.

8. Never Deposit any amount under pressure of any officer unless liability to pay tax is clear to the Auditee. If paid, record in the letter submitted for intimating the payment that “amount is paid on instruction of the audit team under protest and without admission”.

Key Points

9. Check the legal position prior to accepting and depositing demand for penalty. Tax department as general practice in every case alleges “Suppression of Facts/ wilful mis-statement” by Assessee to invoke the extended period and impose penalty. In this regard the Hon’ble Courts and Tribunal have held in multiple cases that the question of “Suppression of Facts/ wilful mis-statement” by Assessee does not arise where the mistakes are found by the audit team from the financial records of the Company. Further, where the interpretation of law is involved, no penalty can be imposed.

Key Points

10. Also verify that Audit Department has followed all the procedures instructed by the Government/ CBIC from time to time. E.g. Under the Service Tax regime, the Audit Team is required to hold a pre-consultation meeting with the Auditee prior to finalizing the observations and issuance of SCN. Recently, the Hon'ble Delhi High Court has set aside the SCN issued without any pre-consultation (although the case is pending before the Hon'ble Supreme Court).

DOCUMENTS WHICH ARE GENERALLY SOUGHT BY THE DEPARTMENT

DOCUMENTS & RECORDS

- The GST Authorities have started to send the notices for an audit of the books of accounts and records maintained by the persons registered under GST Law to be conducted by the GST Audit Department.
- During the course of such audits, the GST Audit Department requires the Auditee to furnish various records and information in order to verify whether such registered person has complied to various provisions of the GST Law.

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The following documents and information are usually required to be furnished during the audit:

1. Copies of various returns filed (Eg. GSTR-1, GSTR-3B, GSTR-9), Audit Report (GSTR-9C) and GSTR-2A.
2. Copies of Balance Sheets, Annual Reports, Income Tax Returns, Form 26AS.

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3. Income Tax Audit Reports (Form 3CA/3CD and 3CEB), Cost Audit Report, Internal Audit Reports (wherever applicable) .
4. Reconciliation between the Turnover Report in Profit & Loss Statement with the Turnover reported in GSTR-1, GSTR-3B & GSTR-9 and Form 26AS.
5. Reconciliation of liability paid under Reverse Charge with corresponding expenditure booked in books of accounts.

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6. Reconciliation between Input Tax Credit Availed by the Assessee with the invoices being reflected in GSTR-2A.
7. Input Credit Register maintained by the assessee along with Electronic Credit and Cash Registers.
8. Copies of invoices issued by the assessee.
9. Copies of invoices on which input tax credit has been availed by the assessee

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10. Sample copies of Work Orders, Purchase Orders and Agreements entered into by the assessee.

11. Nature of business activities undertaken by the Company

PROVISIONS UNDER GST LAW FOR GST AUDIT BY TAX AUTHORITIES

Audit by Tax Authorities

- Section 65 of the Central Goods and Service Tax Act, 2017 (“CGST Act”) and similarly Section 65 of the State GST Acts empowers the Commissioner or the officer authorized by him to undertake the audit of any registered person.
- It is to be noted that audit can be conducted under Section 65 of “registered” person only. Further, audit can be initiated of “Any” registered person.

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Period of Audit

- Rule 101 provides that audit can be conducted under Section 65 for a financial year or part thereof or multiple financial years.

Place of Audit

- Audit can be conducted by officers either at the place of business of the Auditee or at their own office.

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Time limit within which Audit has to be completed

- The department has to complete the audit within 3 months from the date of commencement of Audit. It can be extended by Commissioner for maximum further 3 months by recording reasons in writing.
- “Commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

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Necessary Facility and Documents

- During the course of audit Authorized officer may require the registered person:
 - To afford him the necessary facility to verify the requisite records and documents
 - To furnish requisite information
 - To render assistance for timely completion of the audit.

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Conclusion of Audit

- On conclusion of the audit the officer has to inform the auditee within 30 Days
 - Findings of the Audit
 - His rights and obligations
 - Reasons for such findings

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Issuance of SCN

- If the audit results into detection of:
 - Tax Not Paid
 - Tax Short paid
 - ITC wrongly availed or utilized

- The proper officer may initiate action under Section 73 or 74 of the CGST/SGST Act (i.e. issue SCN).

THANK YOU

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