

**PAYMENT OF TAX & INTEREST UNDER “SELF  
ASSESSMENT AND FINALISATION OF  
PROVISIONAL ASSESSMENT UNDER GST.**

By

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In this Article, we will analyze various terms “self assessment”, “provisional assessment” and “finalization of assessment” have been dealt with the help of landmark cases of Hon’ble Supreme Court and High Court. In pre-GST regime, Rule 2(b) of Central Excise Rule, defined “assessment includes “self-assessment” of duty made by assessee and Rule 7 of CE Rule defined provisional assessment the grounds for seeking provisional assessment. Section 2(11) CGST Act says “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

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2: The assessment under Central Excise Act was basically an invoice based self-assessment, except in case of cigarettes. The

assessee was to submit monthly Central Excise Return known as ER-1/ER-2/ER-3 Form.

3: The Section 59 of CGST Act, 2017 deals with “self-assessment” and reads as under:

Section 59: Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

### **PROCEDURE FOR SCRUTINY OF RETURNS.**

4: If any return furnished by a party is selected for scrutiny, the proper officer (Superintendent has been designated as PO) shall scrutinize the same as per Section 61 of Act. Upon any deficiency or discrepancy being found, PO shall issue a notice in GST ASMT-10 calling upon the party to remove and seeking explanation within a such period but not exceeding 15 days. If PO is satisfied with the explanation/submission, PO will inform the party in Form GST ASMT-12 as per Rule 99(2) of CGST & SGST Rule or else, PO shall determine the tax, interest and penalty as per Rule 99(1) CGST Rule and SGST Rule 2017. The party may accept the quantification of tax, interest or penalty or else may file an appeal before First Appellate Authority under Section 107 of CGST Act in view of the fact that Section 107 permit filing of an appeal against decision or order. The order passed by the PO would fall within Section 107.

4: The DB of AP High Court in the case of Bachina Srinivas vs. CCE(04.07.2019 - APHC) : MANU/AP/0255/2019 (This is a case of post GST regime) has observed that under “self assessment regime”, a statutory obligation is upon every person providing service in terms of Section 70 of Finance Act, 1994 where-under the appellant is legally required to assess and accordingly discharge the service tax liability within the time limits prescribed under law.

5: The Division Bench of Guahati High Court in Brahmaputra Tele Production Pvt. Ltd. vs. State Bank of India : MANU/GH/1035/2019 has, while dealing with an issue of SCN wherein the assessee has admitted that duty or tax is payable as per “self assessment” during pre GST regime, observed as under:-

A conjoint reading of Sections 73 and 87 of the Finance Act, 1994 would go to show that in case of non-payment of service tax dues, SCN would be issued within the time frame. If the assessee submits a Reply to SCN, the same has to be considered before quantifying the service tax dues. Therefore, an element of adjudication is inbuilt in Section 73. However, in a case of self assessment, in which case the, defaulted amount shall be recovered since the assessee accepts that this amount is payable on “self-assessment” and, therefore, no adjudication is necessary.

6: The “self assessment” has been defined by the Division Bench of Delhi High Court in the context IT Tax, in Shakti Bhog Foods Limited vs. CIT : MANU/DE/2651/2016, in the following words:-

By the process of self-assessment, the assessee is required to pay tax on the basis of his return and such tax is treated as assessed tax.

**NO SCN IS NECESSARY FOR RECOVERY OF  
TAX & INTEREST IN CASE OF SELF-  
ASSESSMENT.**

7: The issue came up for consideration before the Karnataka High court in the case of LC Infra Projects Pvt. Ltd. vs. UOI : MANU/KA/5300/2019 as to whether SCN is necessary for claiming interest under Section 50 CGST Act and also attachment of Bank Account, Court has observed as under:-

Show Cause notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of CGST Act and penalty leviable. Undisputedly, the interest payable under Section 50 of the Act has been adjudicated by Proper Officer (PO) without issuing SCN, which is in breach of principles of natural justice. Similarly, after determination of the interest liable to be paid by the petitioner, no notice has been issued before attaching the bank account of the petitioner. There is a lapse on the part of PO. The argument of PO that Section 75(12) of the Act

empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived as said Section is applicable only to the self-assessment made by the assessee.

8: The High Court held that, by virtue of Section 75(12), no SCN is necessary for recovery of tax or interest in case of “self-assessment” as the party itself admits that a particular amount of tax and interest is payable.

### **PROVISIONAL ASSESSMENT**

**9: The Section 60 (1) of CGST Act, reads as under:-**

Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not less than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

10: As per Rule 98 of CGST Rule, an assessee can request for provisional assessment, in accordance with the provisions of Section 61(1) CGST Act, in following circumstances (a) where assessee is unable to determine the value of excisable goods in terms of Section 15 (previously Section 4 of Central Excise Act) CGST Act on account of non-availability of any document or information or (b) assessee is unable to determine rate of duty

applicable. The assessee may move an application in Form GST ASMT-01, on common portal giving reasons for seeking provisional assessment of Tax.

### **CONTENTS OF APPLICATION:**

11: As per Department Guidelines (pre-GST regime), assessee making a request for provisional assessment to indicate the following:-

- a) Specific grounds, and documents and information for want of which final assessment cannot be made;
- b) Period for which provisional assessment is required;
- c) Rate of duty or the value or both, as the case may be, proposed to be applied by assessee for provisional assessment;
- d) Undertaking to appear before AC (pre GST regime) now Proper Officer, within seven days or such date fixed by him, and furnish all relevant information and documents within the time specified by the Asstt/Dy Commissioner in his order, so as to enable the proper officer to finalize the provisional assessment.

12: As per Rule 98(2), PO may, if so desire, call for additional information, documents and the assessee would submit its reply in Form GST ASMT-03. On such application, if PO is of the opinion that provisional assessment is not necessary, he may ask assessee to appear before him on the fixed day. After the hearing, PO may issue order in Form GST ASMT-04 that either provisional assessment is not necessary, or he may order the provisional assessment. Additionally, Chapter 3 Part IV Para 2.1

of CBEC's CE Manual 2005 also in MF(DR) Circular No.288/4/97-CX dated 14.1.1997, may be referred.

13: The assessee shall execute a Bond in Form GST ASMT-05 in accordance with Rule 60(2) along with security in the form of Bank Guarantee for an amount as may be fixed by PO. As per Rule 98(3), security of the value not exceeding 25% of the amount covered under the Bond. The Asstt/Dy Commissioner has been designed as PO for the purpose of fixing the amount of Bank Guarantee as per Circular No.3/3/2017 dt.5.7.2017.

14: The Supreme Court in Metal Forgings v. UOI MANU/SC/1029/2002, while dealing with an issue as to when assessment would be deemed to be provisional, has held as follows:-

From the above, it is clear that to establish that the clearances were made on a provisional basis, there should be first of all an order under Rule 9B of the Rules, and then material to show that the goods were cleared on the basis of said provisional basis, and payment of duty was also made on the basis of said provisional classification.

15: The Supreme Court in the case of Bombay Dyeing and Mfg. Co. Ltd. vs. CCE (09.12.2019 - SC) : MANU/SC/1698/2019 has, has taken somewhat diametrically different view but in view of the peculiar facts and circumstances of this case and held that the Appellant voluntarily executed bonds in Form B-13 under Rule 9B and also furnished bank guarantee. The authorities have made endorsements on the bonds and on the monthly RT-12 returns

filed by the Assessee, indicating that it was a case of provisional assessment. The Supreme Court rejected the contention of assessee since express order has not been passed for provisional assessment hence it will not treated as provisional assessment.

### **FINALISATION OF PROVISIONAL ASSESSMENT**

16: As per CBE&C Circular No.3/3/2017-GST dated 5.7.2017, Assistant Commissioner (for Central Tax) has been authorized to finalize provisional assessment under Section 60(1) Act. read with Rule 98 of CGST Rule, which shall be carried out within a period of six month extendable to another period of six months on sufficient cause (total 12 months) being shown as per Section 60(3).

17: After finalization provisional assessment, in case further tax is found payable, party shall tax along with accrued interest as prescribed under Section 50(1). In the event tax found payable is less, the party would be entitled to refund along with interest accrued as per Section 60(5) but, however, refund so payable to the party shall be subject to “unjust enrichment” under Section 54(8). The party may file an application in form GST ASMT-08 for release of security furnished, after issue of final assessment order in accordance with Rule 98(6).

### **NO INTEREST IF PAYMENT MADE DURING THE PENDANCY OF PROVISIONAL ASSESSMENT.**



18: That Section 60(4) of Act says that if the assessee has not paid the tax on the supply of goods or services or both under provisional basis on the due dates specified under Section 39(7), the assessee shall be liable to pay interest at the rate specified under Section 50(1) of the Act.

18:1: The Constitution Bench of the Supreme Court in the case of State of Rajasthan vs. Ghasilal : MANU/SC/0288/1965, so long as there is no assessment, it cannot be held that there is liability to pay tax – impliedly it would mean that there is no liability to pay interest over the tax as well.

But till the tax payable is ascertained by the assessing authority under section 10, or by the assessee under section 7(2), no tax can be said to be due within section 16(1)(b) of the Act, for till then, there is only a liability to be assessed to tax.

19: The DB of Delhi High Court in the case of Pentex Sales Corporation vs. Commissioner of Sales Tax MANU/DE/1112/2013, has observed that no interest would be payable from the date of filing of return but would be payable from the date of assessment.

20: The Supreme Court in Steel Authority of India Ltd. vs. CCE : MANU/SC/0709/2019, unless there is a specific provision of payment of interest which is in the nature of

damages or compensation, no liability towards can be fastened upon the assessee.

**ONCE FINAL ASSESSMENT HAS NOT BEEN  
CHALLENGED, SUBSEQUENT PROCEEDING  
BY ISSUE OF FRESH SCN NOT PERMISSIBLE.**

21: The Division Bench of Allahabad High Court in the case of Honda Siel Power Products Ltd vs. UIO: MANU/UP/4042/2019 has relied upon the following observations of the AP High Court.

In case of CCE and C, Tirupati vs. Panyam Cements and Minerals Industries Ltd. MANU/AP/0486/2015, the Andhra Pradesh High Court took a view that once the department failed to file an appeal, it would be incorrect to start collateral proceedings by issuance of show-cause notice under Section 11A of the Excise Act.

**RE-ASSESSMENT ON THE BASIS OF  
SUBSEQUENT DECISION IS NOT  
PERMISSIBLE.**

22: The Hon'ble Apex Court in case of CIT vs. Simplex Concrete Piles MANU/SC/1172/2012, and also Division Bench of Allahabad High Court in case of Samsung India Electronics Pvt. Ltd. vs. State of U.P. and others, (2016) SCC Online All. 1539 has observed as under:-

Further, a subsequent judgment cannot be used to reopen assessments or disturb past assessments which have been concluded.

23: The Courts have held that no reassessment can be made once the proceedings are concluded, merely on the basis of change of opinion. In this connection, reliance can be placed on the judgments viz. CIT vs. Bhanji Lavji MANU/SC/0259/1971, Arun Gupta vs. UOI MANU/UP/0053/, Calcutta Discount Company Ltd. vs. ITO MANU/SC/0113/1960 Jeans Knit Pvt. Ltd. vs. DCIT Bangalore MANU/SC/1691/2016.

24: The Division Bench of Allahabad High Court in the case of Honda Siel Power Products vs. Union of India and Ors. (17.12.2019 - ALLHC) : MANU/UP/4042/2019 on the basis of CA Certificate, submitted by the petitioner, held that there is no “unjust enrichment” at all. In fact, in all proceedings, to thwart the argument of the Revenue about unjust enrichment, it is always advisable to submit (i) Affidavit of Head of Finance & Accounts saying that tax in question has not been recovered and (ii) a Certificate from Chartered Accountant certifying that tax in question has not been recovered by the assessee from the purchasing dealers.

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