

**From the Desk of B.S.S.Rao**

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**Article on “audit” conducted by the GST department under Section 65 of CGST Act,2017.**

Dear Colleagues, Good day to you.

I have received suggestions to prepare an article on “Audit conduct by the GST Department under Section 65 of CGST Act,2017. I have covered the following topics on Audit conducted by GST officer under Section 65 of CGST Act,2017 for your easy reference and prepare records to be submitted to the GST audit officer to complete your client’s audit smoothly and to complete within prescribed time limit as per CGST Act,2017. I am trying to prepare this article to the best of my knowledge and based on today’s Act position on the above subject matter for your reference purpose. Kindly refer and provide your suggestions to the mail i.d. [sitapathirao@yahoo.co.in](mailto:sitapathirao@yahoo.co.in) or send to what’s app no.9848099490.

**Dear colleagues, we have completed 4 years of GST Law. The honourable Union Finance Minister made a proposal of “scrap GST Audit” in Union Budget,2021. The scope of GST Audit under Section 65 has been increased. As per information from the reliable source from the CGST Department “MASSIVE CASES” will be taken in GST Audit as per Section 65 of CGST Act, 2017. So, it’s time to know “how to select cases for Audit under Sec.65 and what are the Risk Parameters for selection of Audit” by the CGST Department. So, I thought in my mind to create certain awareness and to provide certain important key points on GST Audit taken by the GST Officers under Section 65 of CGST Act,2017 with relevant notifications, Press Releases and Instructions issued by the CBIC from time to time to prepare data for completion of audit and discuss with the GST Audit Officer by all the GST professionals on various doubts arising by the GST Audit officer during the GST Audit to the tax professionals.**

As per Section 65(1) of the CGST Act, 2017, the Commissioner or any officer authorized by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. The period of audit to be conducted under Sub-section (1) of Section 65 shall be a financial year or multiplies thereof as per Rule 10(1) of CGST Act, 2017.

As per Section 2(13) of the CGST Act, 2017, ‘Audit’ means the examination of records, returns and other relevant documents prescribed in the CGST Act,2017, whether the tax payer has maintained or furnished by the registered person under this Act or the rules made thereunder to verify correctness of turnover declared and taxes paid there on, input tax claimed by the tax payer and followed compliance with the provisions of the CGST Law.

Now Friends, let us understand “**what are the Rick Parameters**” for Selection of audit cases by the GST Department.

**Some of the important Risk Parameters that could be considered during selection of audit by Audit Commissioner are as under:-**

- (i) Volume of the Taxpayer's turnover/net profit,
- (ii) If any changes happened in the Taxpayer's turnover/net profit for the previous years,
- (iii) Volume of Exemptions claimed by the taxpayer's year wise,
- (iv) Higher incidence of supplies without issuance of E-Way Bills,
- (v) Taxpayer who does not file periodical return but issues E-Way Bills and inconsistency in the data declared in GSTR-1 and E-way Bills generated,
- (vi) Financial ratio analysis and if any major variations observations ,
- (vii) Volume of Tax Refund claimed by the taxpayer's year wise comparison and if any variations observations,
- (viii) Multitude of the taxpayer's legal relationships with other entities,
- (ix) Taxpayer has multiple branches,
- (x) Taxpayer who has requested waiver or is bankrupt,
- (xi) Taxpayer categorized as High Risk,
- (xii) Taxpayer's return was previously investigated for evasion,
- (xiii) Taxpayer who has not been audited in the pre-GST era for a long period i.e. 4 to 5 years under VAT or Service Tax,
- (xiv) Any specific information received from other Government authorities i.e. Income Tax, ROC,RBI, Local tax authorities or any written compliant received from the person.
- (xv) Difference in the turnover as declared in Form GSTR-1 and GSTR-3B returns for continuous period,
- (xvi) Difference in ITC availed and utilized as per GSTR-3B and ITC available as per GSTR-2A,
- (xvii) Wrong classification of goods or services provide, effecting wrong levy of tax,
- (xviii) Mismatch in the details of Export reported under GSTR-1 and information lodged on ICEGATE,

Under the above circumstances the audit officer on receiving authorization from his higher authority as per GST Law,2017, shall issue notice in advance not less than 15 working days prior to conduct of audit.

The audit officer shall complete such audit within 3 months from the date of communication of audit as per section 65(4) of CGST Act, 2017. 'Commencement of audit' means the date on which the records and other documents called by the audit officer are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

**Procedure to be followed by the GST officer during the department audit:** During the course of audit the authorized officer may require the following records and data of registered taxable person under GST Law, 2017.

**(a) Financial Year wise audit:** As per Sec.65(1) of CGST Act, 2017, the period of audit shall be a financial year or multiples thereof as per Rule 101(1) of CGST & SGST Rules, 2017.

**(b) Powers to order and conduct audit:** Persons registered with Central GST authorities, will be audited by Superintendent of Central Tax who is designated as “ Proper officer” for the purpose of raising demand under Section 65(7) of CGST Act, 2017, vide circular issued by CBE&C No.3/3/2017-GST, dated . 5.7.2017.

**(c) Who are registered with the State GST Authorities,** such taxable person’s audit is taken up by Assistant Commissioner (State Tax ) and Deputy Commissioner ( State Tax ) designated as proper officer for the purpose of raising demand under Section 65(7) of SGST Act, 2017.

**(d) Verification of records by audit team and audit notes:** The proper officer authorized to conduct audit of the records and books of account of the registered person shall with the assistance of the team of officers and officials accompanying him, verify the documents and statements furnished under the Act and rules made thereunder , to check the correctness of following:-

- (i). Books of accounts as per Section 35 of the CGST Act read with Rule 56 Prescribes Accounts and record requirements for a registered person,
- (ii). Tax Invoices, Bill of Supply, Delivery Challans, Credit Notes, Debit Notes, receipt Vouchers, payment vouchers and refund etc., like the details in the invoices should be subject to specific rules, if the format of the invoices various. Management should be advised to make amendment in the invoice include the requirements as per the GST Rules, 2017.
- (iii). If the taxpayer is having multiple branches, stock transfers amongst branches must also be reconciled. Stock Register reflecting opening balance, receipts, supply and goods lost, stole Destroyed and the closing stock,
- (iv). If the taxpayer is a manufacturer, production records including break up of raw Materials, finished goods, scrap etc,
- (v). Details of Advances received and paid during the audit period,
- (vi). Records pertaining to Input Tax Credit availed and utilized like if the taxpayer claimed extra ITC , he will have to pay interest @24% on the excess tax amount ,the auditor would need to reconcile that businessman does not claim excess Input Tax Credit. Input Tax Credit should be reversed for non-payment within 180 days and this should be checked by the auditor,
- (vii). If the taxpayer has maintained electronic records, log of all the entries modified or Deleted etc.,
- (viii). If the taxpayer is a Job worker, Job work register etc., Was there any good which was sent on approval basis and it’s exceeding the time limit of 6 months and not offered to tax? If yes, then add that amount in turnover and increase the tax liability
- (ix). Details of E-Way Bills register as per GSTN data,
- (x). Copies of GST Returns like GSTR-1, GSTR-2A, GSTR-2B, GSTR-3B, GSTR-4, GSTR 5, GSTR-5A, GSTR-6, GSTR 9/9C, GSTR-10, ITC-01, ITC-05, ITC-05A and RFD-01 and copies of tax payment challan etc., for the audit periods.

- (xi). Audited financial Statements including Audit Report etc., for the audit periods,
- (xii). Copy of Income Tax Return(filed) for the audit periods,
- (xiii). Copy of Form 26AS provided by I.T. Department for the audit periods.
- (xiv). Copies of Inward and Outward Ledgers,
- (xv). Copy of the GST registration certificates of Principal Place of Business and branch and other place of details whether incorporate or not,
- (xvi). Ledger of stock maintained at where house by the taxable person,
- (xvii). Copy and details of Trans-1, Trans-2 and 2A and Trans-3 etc., for the year 2017-18 along with stock register and copies of original invoice relating to ITC claimed in Trans-1 for the period prior to July'2017 as per Sec.143 of CGST Act,2017.

**The Below Table shows details of documents to be issued under GST Law by the taxpayers.**

S.No.	Event	Type of Document	Relevant Section of GST Law	Relevant Rule of GST Rules
1	Where a registered person supplies of taxable goods	Tax Invoice	Sec.31(1) of CGST Act,2017.	Further Proviso to 46 Rule 1 of CGST Rules,2017.
2	Where a registered person supplies of taxable services	Tax Invoice	Sec.31(2) of CGST Act,2017.	Rule 47 of CGST Rules,2017.
3	Where a registered person supply of goods for small value	Bill of Supply.	Sec.31(3) (b) of CGST Act,2017.	Further Proviso to 46 Rule 1 of CGST Rules,2017.
3	In case of continuous supply of goods	Tax Invoice	Sec.31(4)of CGST Act,2017.	Further Proviso to Rule 1 of CGST Rules,2017.
4	In case of continuous supply of Service	Tax Invoice	Sec.31(5)of CGST Act,2017.	Rule 2 of CGST Rules,2017.
5	On refund of Advance by a registered person.	Receipt Voucher shall be issue by the recipient.	Sec.31(3)(d) of 31(3) (e ) of CGST Act,2017.	Rule 50 & 51 of CGST Rules,2017
6	In case supply of services under a contract before the completion of the supply.	Tax Invoice	Sec.31(6) of CGST Act,2017.	Rule 47 of CGST Rules,2017.

7	Notwithstanding anything in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply takes supply, the invoice shall be issued before or at the time of supply or six month from the date of removal , whichever is earlier. Explanation:- For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.	Tax Invoice	Sec.31(7) of CGST Act,2017.	Rule53(1),(2),(3) of CGST Rules,2017.
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**Time period prior to conduct the audit:-**

The proper officer after receiving intimation and authorization from the Commissioner about GST Audit under Sec.65 of CGST Act, 2017, where it is decided to undertake the audit of a registered person, shall issue a notice not less than 15 working days prior to the conduct of Audit ,

**Time Limit for completion of Audit by the GST department:-**

The GST Audit officer is required to complete within 3 months from the date of commencement of audit. The period can be extended for a further period of a maximum of 6 months by the Commissioner,

**The taxpayer to follow the following duties during the GST Audit conducted by the GST officers:**

- 1) To Comply in time to GST-ADT-01 notice and all necessary correspondence from audit officer with respect to the audit proceeding,
- 2) To make available all necessary books of accounts i.e. physical record as well as accounting system access/electronic record as per necessity to audit team and any other document/ information required to complete the audit,

- 3) To provide the necessary facility to verify the books of account/other documents as required,
- 4) To ensure presence of either the Registered Person or his authorised representative at the place of business where audit is being conducted during audit activity so that he can explain the books and the business activity properly,
- 5) To extend necessary cooperation to the audit team during Place of Business audit visit for timely completion of audit,
- 6) To follow the statutory timelines in case of making payment if audit results are accepted and / or to comply with notice under section 73 /74 of GST Act in case audit finding are not accepted.

#### **Modes of serving Notice under GST:**

1. Hand-delivering the notice either directly or by a messenger or by a courier to the taxpayer or his representative.
2. By registered post or a speed post or a courier with an acknowledgement-addressed to the last known place of the business of the taxpayer.
3. Communication through the email address.
4. Making it available on the GST portal after logging in.
5. By publication in a regional newspaper being circulated in the locality- that of the taxpayer based on the last known residential address.
6. If none of the above means is used, then by affixing it in some prominent place at his last known place of business or residence. If this is not found as reasonable by the tax authorities, they can affix a copy on the notice board of the office of the concerned officer or authority as a last resort.

#### **Notices in GST Portal:**

The main problem faced by the taxpayers regarding notices is that many a times, they don't understand how to check the notice on the GST portal. Earlier, notices were sent in hard copy at the registered address of the taxpayer, but in GST Law, to follow:-

1. Log in on common portal > Click on User services > Click on View Notices,
2. Or sometimes few notices are served under the heading View additional notices.

#### **List of Notices Form – Description and Response/ Precautions for the same:-**

S.No.	Form No. under GST	Description of Notice	Notice/ How to respond
1	REG-03	Sent while verification of GST registration application to ask the taxpayer for clarifying details entered in the application and the documents provided. The same notice form is applicable for amending the GST registration.	Upload documents as mentioned and have clear understanding.

2	CMP – 05	Show cause notice questioning taxpayer's eligibility for composition scheme.	Always keep track of the turnover, so, if limit exceeds, you can opt for normal registration.
3	GSTR-3A	Default notice for the taxpayer who has not filed GST returns : GSTR 1, GSTR 3B, GSTR 4 or GSTR 8	File all the relevant returns due along with late fees, interest on the GST liability, if any.
4	ASMT-10	Scrutiny notice for intimating discrepancies in the GST return after scrutiny along with tax, interest and any other amount payable in relation to such discrepancy, if any	Respond by giving reasons for discrepancies in the GST returns
5	RFD-08	Show cause notice of Rejection of Refund Application of taxpayer	Keep track of documents, information submitted asked by the department.
6	ASMT – 02	Notice for seeking additional information for provisional assessment under GST	Provide such information within the time.
7	ASMT -14	Show Cause Notice for assessment under section 63 – reasons for conducting the assessment on the best judgment basis	These notices are issued mostly when reply to earlier notices are not submitted, hence always file the replies on time.
8	ADT – 01	Notice for conducting audit	These audits are directed because of the complexity or huge defaults are made
9	REG – 17	Show cause notice why should the GST Registration not be cancelled for the reasons laid down in the notice	Apply for the cancellation of GST registration, only after filing all the returns till the date of cancellation, and provide clarification with documents for cancellation

#### **What are the consequences if not responded to the notices by the taxpayer?**

The taxpayer should respond promptly to the notice issued in his /her name within the time specified . In case, the taxpayer fails to do so, he will be legally acted upon. The GST authorities can eventually prosecute such a taxpayer or consider it as a purposeful default and charge the taxpayer with penalty. But, as a good practice and timely reply to the notices, Taxpayers are always advised to keep track of information reported on GST Portal.

If any irregularity or mistake is observed, taxpayer should try to correct the same in the most latest return, if possible, also, taxpayer should reconcile all the returns with each other, like turnover reported in Form GSTR-1 with Form GSTR-3B and E-Way Bills generated and also reconciliation of Input Tax Credit availed in Form GSTR3B with Form GSTR-2A or Form GSTR-2B.

### **How to identify differences between Form GSTR-2A and Form GSTR-3B ?**

Generally these following differences happen between Form GSTR-2A and Form GSTR-3B.

- (i) The supplier is having frequency of uploading Form GSTR-1 Quarterly,
- (ii) Input Tax Credit as per Reverse Charge Mechanism,
- (iii) Input Tax Credit relating to Import of Services and Goods,
- (iv) The important issues is Supplier has not uploaded and filed Form GSTR-1 in time and not properly filed and uploaded.
- (v) The buyer has not made payment on inward supply of goods and services within specified time i.e. within 180 days , but supplier raised invoice as per GST law at the time of supply of goods and services but recipient has claimed ITC on such invoices. So, under these circumstances buyer has reversed ITC along with interest and informed supplier.

### **If the buyer has identified differences between Form GSTR-1 and Form GSTR-3B , how to rectify such differences by the buyer?**

If the buyer has identified any differences between Form GSTR-1 and Form GSTR-3B, he has to take appropriate steps i.e. to follow up supplier and inform to upload Form GSTR-1 timely with correct details of Tax invoices with correct tax and value of supply of goods and services.

### **What is the importance to reconcile Form GSTR-1 with Form GSTR-3B by the taxpayer?**

The GST department is watching taxpayers' data along with Form GSTR-1 and Form GSTR-3B regularly with their data analysis wing as per GST audit manual issued by the GST department from time to time to select files for GST audit by the GST authority as per Section 65 of CGST Act. If GST analysis identifies difference as per GST manual GST audit department issues notice on Form ASMT-10 to the tax payer to submit all the records for audit under Section 65 of the CGST Act.

### **What are the consequences, if any mistakes are identified by the GST Audit officer?**

During the audit due to many reasons mistakes are made by the taxpayer like:-

- (i) Wrong or Fake invoices are issued by the taxpayer,
- (ii) False information provided while registering under GST or financial records or documents or has filed fake returns to evade tax and has hidden information or has given false information during proceedings,
- (iii) The taxpayer has collected GST but did not submit it to the GST department within 3 months,



- (iv) The taxpayer has taken ITC without actual receipt of goods and services,  
 (v) If the taxpayer deliberately suppressed outward supply of goods or services to evade tax and other mistakes, the taxpayers are liable to pay penalty as per below:-

S.No.	Types of mistakes	Liable to pay penalty
1	For any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax.	The taxpayer shall be liable to a penalty for an amount equal to:- (i). Rs.10,000/- or (ii).Rs.10% of the tax due from such person, (iii). Whichever is higher.
2	For any reason of fraud or any wilful misstatement or suppression of facts to evade tax.	The taxpayer shall be liable to a penalty for an amount equal to:- (i).Rs.10,000/- or (ii). The tax due from such person, (iii). Whichever is higher.
3	Maximum penalty may be --	The amount of penalty may extend to Rs.25,000/-

### **CONCLUSION:**

After completion of GST Audit by the Appropriate officer, if such taxpayer has not paid tax or short paid tax or erroneously claimed refund amount or wrongly claimed Input Tax Credit availed or utilized, then the proper officer has to issue a notice to the taxpayer within 30 days and serve show cause notice to file objections. If he has satisfied with the objections filed by the taxpayer he will drop the proposal of demand or otherwise initiate action under section 73 or 74 of CGST Act, as the case may be.

Dear colleagues,

I think the above article has clarified all your doubts on GST audit conducted by the GST department under Section 65 of the CGST Act. So, you have to take care about your client and also complete audit smoothly and give support and proper guidance to your clients and department officers as per notifications, circulars and amendments issued from time to time by the Government in this regard. Finally I am trying to provide on the above subject at my best of knowledge.

**THANK YOU**