



DMRN & ASSOCIATES
Chartered Accountants



www.dmrn.in

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GST ASSESSMENT, DEMAND & RECOVERY

- ASSESSMENT (CHAPTER XII)
- AUDIT (CHAPTER XIII)
- INSPECTION, SEARCH, SEIZURE AND ARREST (CHAPTER XIV)
- DEMANDS AND RECOVERY CHAPTER XV
- LIABILITY TO PAY IN CERTAIN CASES CHAPTER XVI



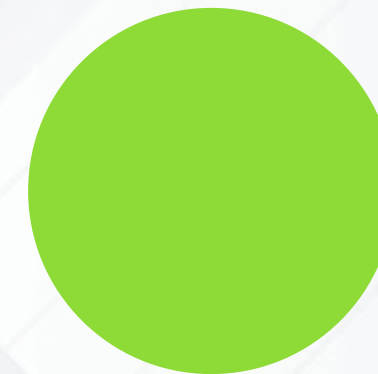
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Definition – 2(11) of CGST Act, 2017

- 01 Sections – 59 to 64
- 02 Rules – 98 to 100
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- 05 DRC – 01 & 07



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ASSESSMENT AND ITS TYPES

Section 2(11) of CGST Act, 2017 - "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;

Types:



Self Assessment



Re-assessment/ Scrutiny assessment



Provisional Assessment

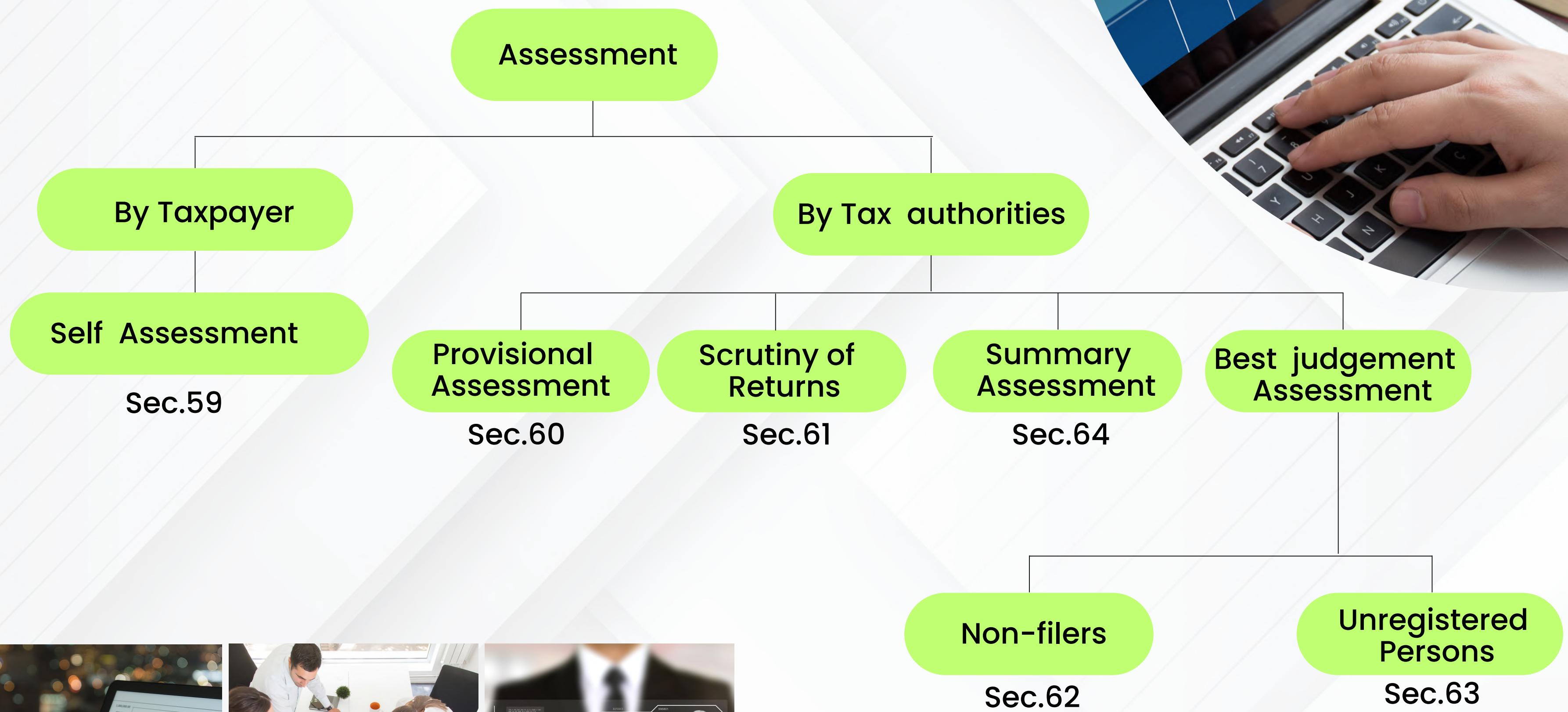


Summary Assessment



Best Judgement Assessment





SELF ASSESSMENT – 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

- 01 Section 39 – Furnishing of returns.
- 02 GSTR-3B – Regular Return
- 03 GSTR-4 – Composition Dealers
- 04 GSTR-5 – NR Taxable Person
- 05 GSTR-6 – ISD Return
- 06 GSTR-7 – TDS Return



PROVISIONAL ASSESSMENT – Sec 60

Why & When?

where the taxable person is unable to determine

The value /rate/ both of goods / services or both

How?

Write to the Proper Officer giving reasons for payment of tax on provisional basis

Time Line?

Proper officer shall pass an order within 90 days allowing payment of tax on provisional basis indicating the value and rate of tax



PROVISIONAL ASSESSMENT – Sec 60

● Surety

The taxable person executes a bond with surety or security to pay the differential between finally assessed tax and provisionally assessed tax.

● Final assessment

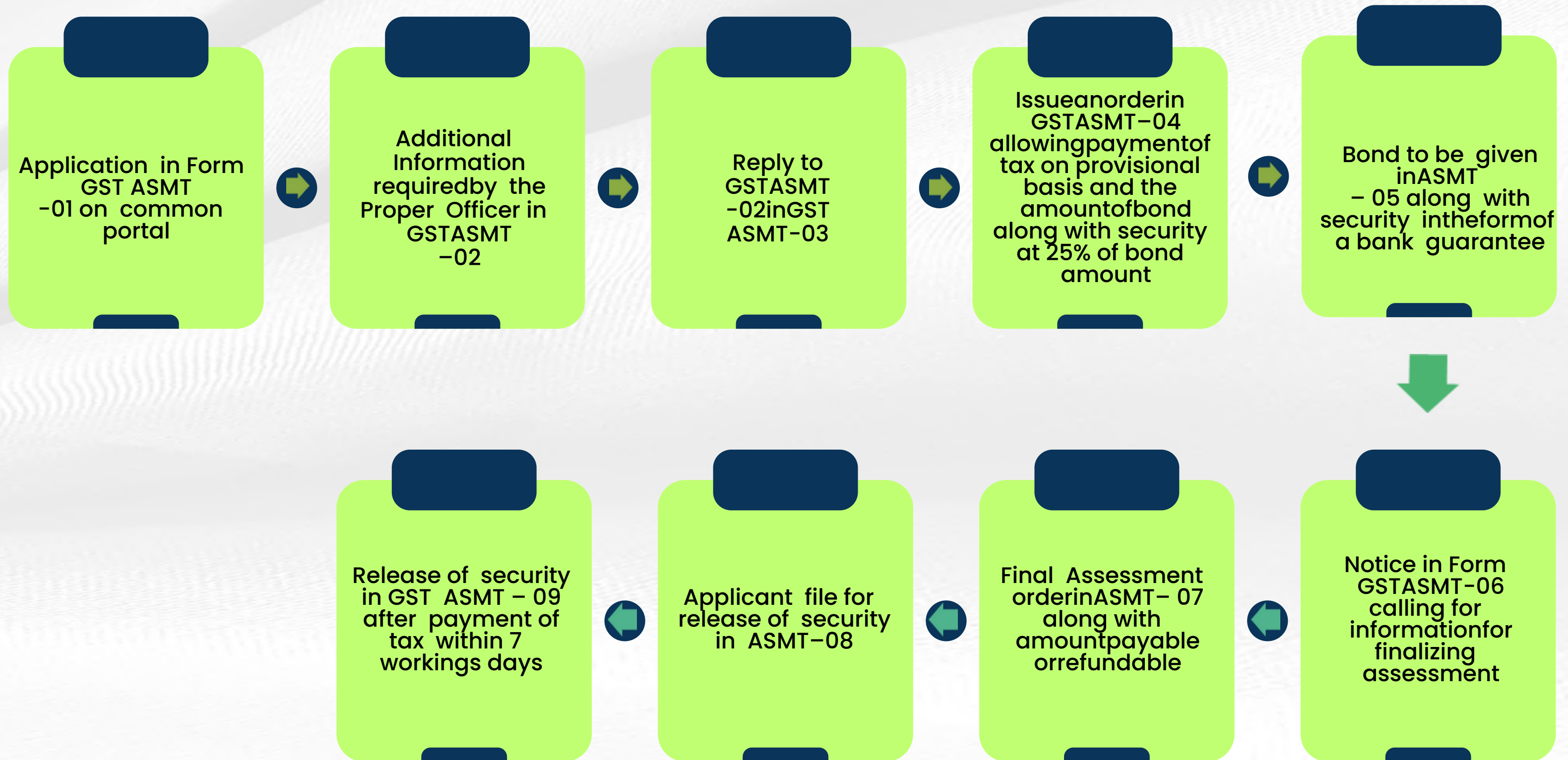
- within 6 months from date of provisional assessment order.
- Can be extended for a further period of 6 months by JC/AC & 4 years by Comm.

● Interest?

- Tax to be paid along with interest @18% considering due date of payment of tax and actual payment
- Interest on refund is available @ 6%



PROVISIONAL ASSESSMENT – PROCEDURE

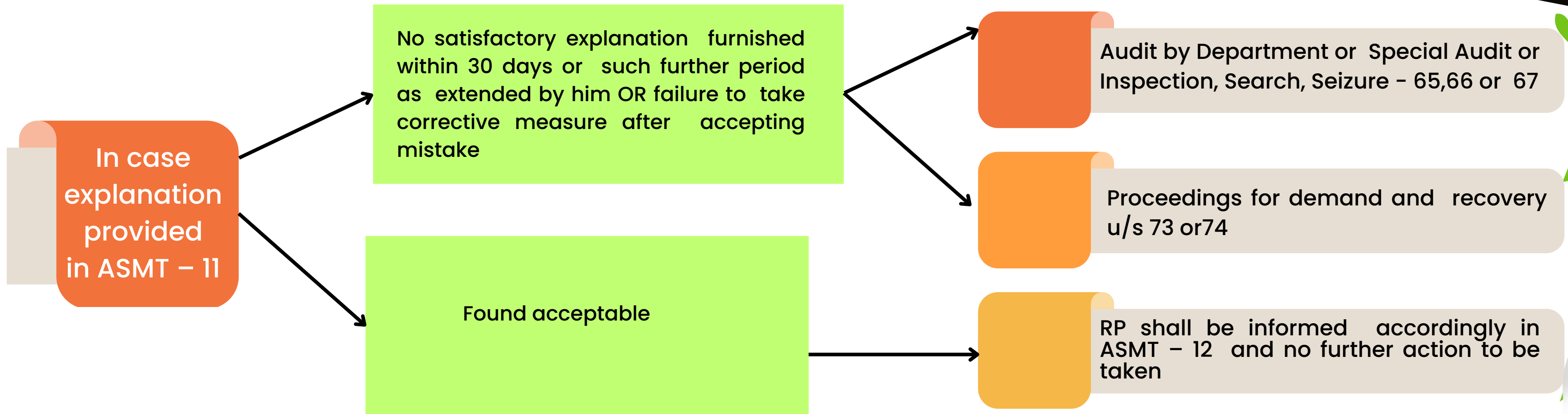


PROVISIONAL ASSESSMENT – FORMS

Forms	Particulars	Rule
GST ASMT-01	Application for Provisional Assessment under section 60	Rule 98(1)
GST ASMT-02	Notice for Seeking Additional Information / Clarification / Documents for provisional Assessment	Rule 98(2)
GST ASMT-03	Reply to the notice seeking additional information	Rule 98(2)
GST ASMT-04	Order of Provisional Assessment	Rule 98(3)
GST ASMT-05	Furnishing of Security	Rule 98(3)
GST ASMT-06	Notice for seeking additional information / clarification / documents for final assessment	Rule 98(3)
GST ASMT-07	Final Assessment Order	Rule 98(3)
GST ASMT-08	Application for Withdrawal of Security	Rule 98(3)
GST ASMT-09	Order for release of security or rejecting the application	Rule 98(3)

SCRUTINY OF RETURNS SECTION 61 R/W RULE 99

- Proper Officer will 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 in ASMT -10 , if any.



Form GST ASMT - 10
[See rule 99(1)]

Reference No.:

To _____

GSTIN:

Name :

Address :

Tax period -

Date:

F.Y. -

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

<< text >>

You are hereby directed to explain the reasons for the aforesaid discrepancies by -----
- (date). If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Signature
Name
Designation



Form GST ASMT-12
[See rule 99(3)]

Reference No.:

Date:

To

GSTIN
Name
Address

Tax period -
ARN -

F.Y. -
Date -

Order of acceptance of reply against the notice issued under section 61

This has reference to your reply dated ----- in response to the notice issued vide reference no. ----- dated --- . Your reply has been found to be satisfactory and no further action is required to be taken in the matter.

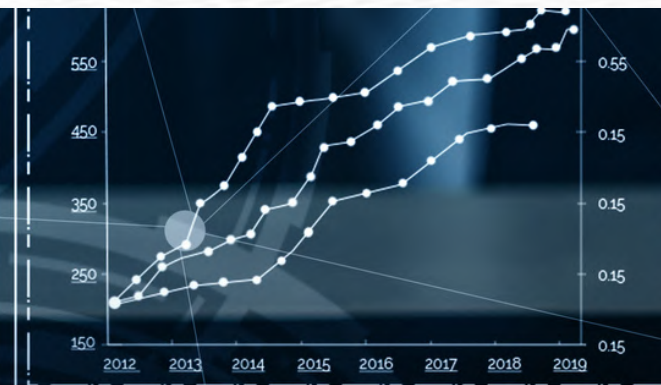
Signature
Name
Designation

ASSESSMENT OF NON-FILERS OF RETURNS SECTION 62 R/W RULE 100

- Notwithstanding anything to the contrary contained in section 73 or 74,
- where a registered person fails to furnish the return under section 39 or section 45,
- even after the service of a notice under section 46,
- the proper officer may proceed to assess the tax liability of the said person
- to the best of his judgment taking into account all the relevant material which is available or which he has gathered and
- issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.



WWAZ	+111.51	▲	-99.31
TVRZ	+92.21	▲	-87.59
TTAW	+87.14	▲	-67.54
CCAD	+131.94	▲	-121.49
HAEW	+74.68	▼	-67.24
JJAS	+94.71	▲	-61.41
RRAP	+77.91	▼	-59.36



ASSESSMENT OF NON-FILERS OF RETURNS SECTION 62 R/W RULE 100

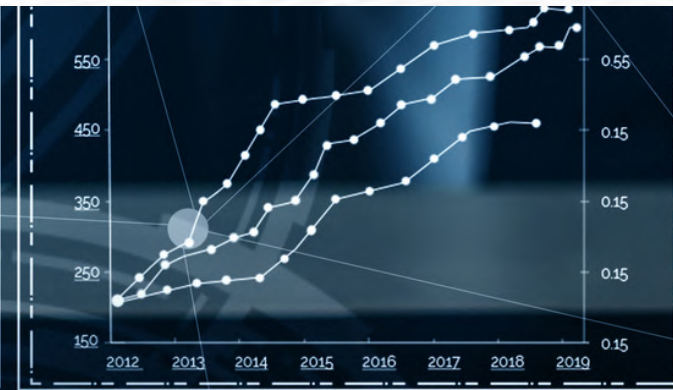
- Where the registered person furnishes a valid return
- within sixty days of the service of the assessment order under sub-section (1),
- the said assessment order shall be deemed to have been withdrawn but
- the liability for payment of interest under sub-section (1) of section 50 or for
- payment of late fee under section 47 shall continue.

Penalty Applicable?

Section & Rules are Silent.



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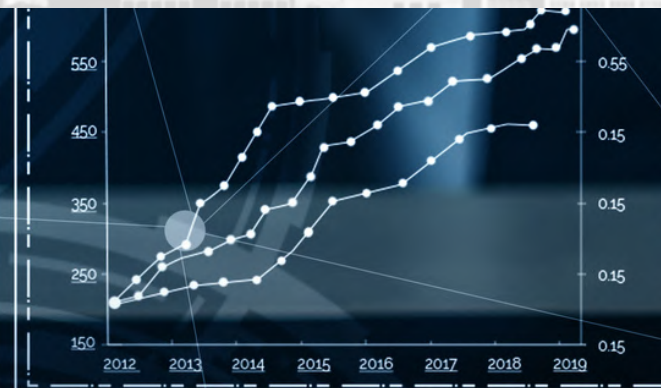
ASSESSMENT OF NON-FILERS OF RETURNS SECTION 62 R/W RULE 100

● Circular No.129/48/2019 dated 24.12.2019

- System generated reminder 3 days before due date
- Mail sent to all defaulters immediately after due date
- FORMGSTR-3A issued within 5 days of due date
- Best Judgement assessment if no return filed within 15 days of GSTR-3A



WWAZ	+111.51	▲	-99.31
TVRZ	+92.21	▲	-87.59
TTAW	+87.14	▲	-67.54
CCAD	+131.94	▲	-121.49
HAEW	+74.68	▼	-67.24
JJAS	+94.71	▲	-61.41
RRAP	+77.91	▼	-59.36



ASSESSMENT OF UNREGISTERED PERSONS – SECTION 63 R/W RULE 100

Where

- A taxable person fails to obtain registration even though liable to do so
- OR
- Whose registration has been cancelled u/s 29(2) but liable to pay tax

-
- Opportunity of being heard to be given – The proper officer shall issue
 - a notice in GST ASMT – 14 and summary thereof in DRC-01 and allow 15 days time
 - The proper officer may proceed to assess the tax liability to the best of his judgement for the relevant periods and issue an assessment order in GST ASMT – 15 and summary order in DRC-07 within a period of five years from the date specified under Section 44 for furnishing of annual return for the FY to which tax not paid relates



SUMMARY ASSESSMENT SECTION 64 AND RULE 100



● Pre –requisites –

- Evidence showing tax liability of a person
- Previous permission of AC/ JC
- Sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue

● Issue an assessment order in GST ASMT – 16 and a summary thereof in DRC-07

● Within 30 days of issue of order, the taxable person [GST ASMT -17] may make an application for withdrawal of the above order,

● the AC/JC feels that such order is erroneous pass an order of withdrawal in GST ASMT -18. If they feel the order is correct, they can reject the application with the same form ASMT-18.

● Then follow procedure as per Section 73 or 74

PROPER OFFICER

Section 2(91) - "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

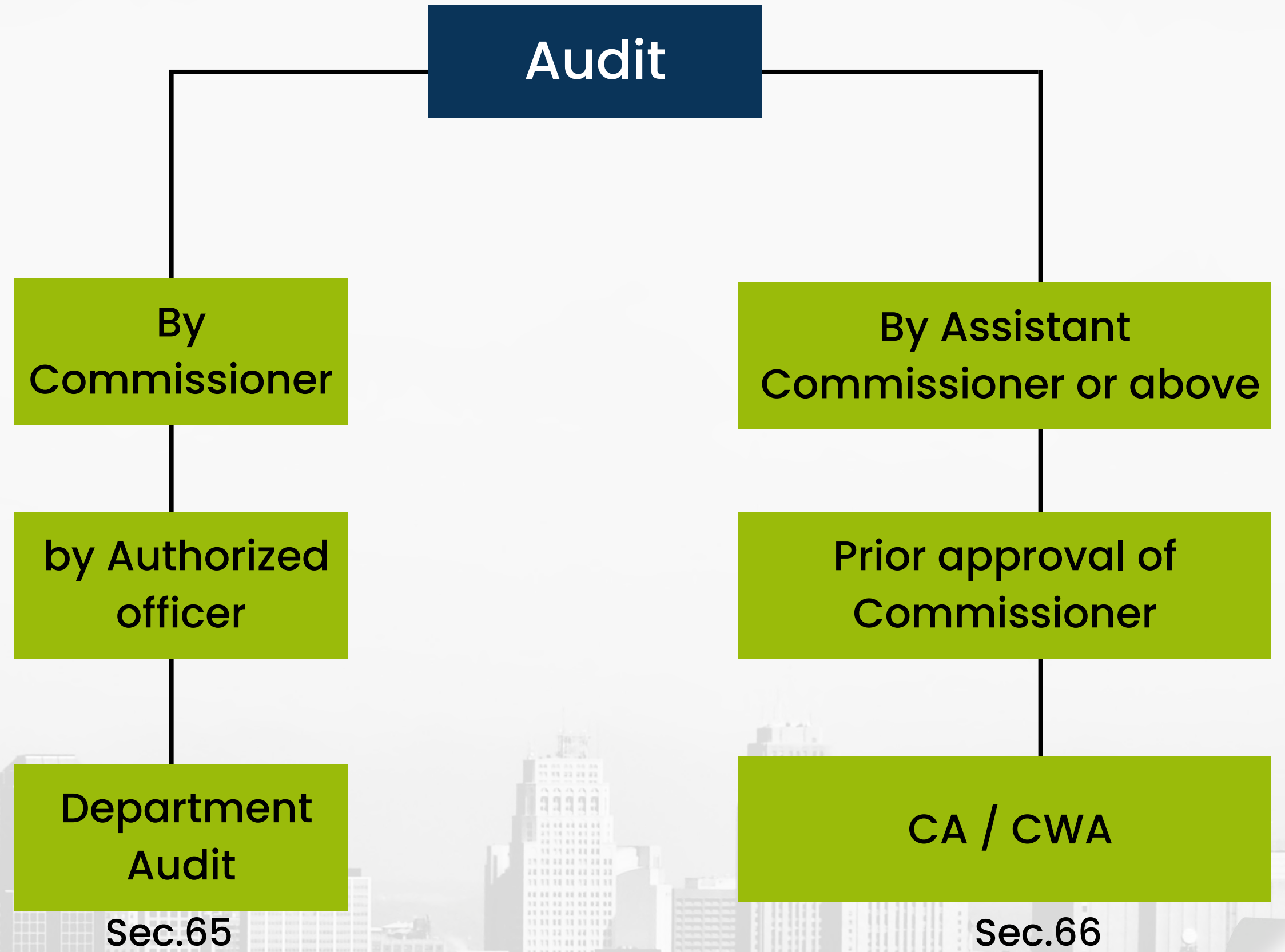
CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017

Designation	Functions
Deputy or Assistant Commissioner of Central Tax	Sub-sections (1), (2) and (3) of Section 60 – Provisional Assessment
Superintendent of Central Tax	Sub-sections (1) and (3) of Section 61 – Scrutiny of Returns Sub-sections (1) of Section 62 – Best Judgment
Deputy or Assistant Commissioner of Central Tax	Section 63 – Assessment of Non-filers of returns Sub-section (1) of Section 64 – Summary Assessment

Audit

(CHAPTER XIII)





ASSESSMENT AND ITS TYPES

Introduction

There are 2 types of audits under GST Law, 2017

- Specific Audit u/s 65 by department
- Special Audit u/s 66 by CA/CWA



ASSESSMENT AND ITS TYPES

Sec.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 u/s 65 (1) shall be a financial year or part of year or multiplies thereof as per Rule 101 of CGST Act, 2017.

Definition of Audit-



As per section 2 (13) CGST Act, 2017, Audit means the examination of records, returns and other relevant documents 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 GST Law.



Process....1



- The officers may conduct audit at the place of business of the assessee or in their office
- The audit officer once received authorization from his higher authority as per GST Law,2017 , the audit officer shall issued notice in advance in form GST ADT-01 not less than 15 working days prior to conduct of audit•

FORM GST ADT - 01

[See rule 101(2)]

Reference No.:

Date:

To,
.....

GSTIN

Name

Address

Period - F.Y.(s) -

Notice for conducting audit

Whereas it has been decided to undertake audit of your books of account and records for the financial year(s)..... to in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -----.

And whereas you are required to:-

- (i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
- (ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorised representative on (date) at.....(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature ...
Name
Designation



Process...2



- The audit officer shall be completed such audit with 3 months from the date of communication commencement of audit as per section 65(4) of CGST Act, 2017.
- The Commissioner with the reasons to be recorded in writing, extend the period by a further period not exceeding six months
- 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 .

Process....3



- **Conclusion of audit-**

The proper officer shall within 30 days inform the registered person that whose records are audited, of findings, his rights and obligations and the reasons for the findings in Form GST ADT-02.

- **Demands and Recovery Process-**

Once the audit was taken, results in detection of tax not paid or short payment or erroneously refunded or input tax credit availed erroneously or utilized. The audit officer may initiate action under Sec.73 and 74 of CGST Act,2017.

FORM GST ADT – 02

[See rule 101(5)]

- Audit Report under section 65(6)
- Your books of account and records for the F.Y..... has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

- [Upload pdf file containing audit observation]
- You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.
- Signature
- Name
- Designation

Procedure during department audit



During course of audit the authorized officer may require the following records, data of registered taxable person under GST Law,2017.

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

(b) Powers to order and conduct audit: Who are registered under Central GST authorities, such taxable person's audits taken up by Superintendent of Central Tax has been 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 under State GST Authorities, such taxable person's audit taken by Assistant Commissioner (State Tax) 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 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. The turnover,
- ii. Exemptions and deductions claimed,
- iii. The rate of tax applied in respect of supply of goods or services,
- iv. The input tax availed and utilized ,
- v. Refund claimed, proper officer and his team will examine other relevant issued ad record the observations in is audit notes.

(e) To afford the necessary facility to verify the books of accounts or other documents he may require,

- I. The taxable person submit these following records to audit officer:
- i) Cash book for the audit period mentioned by the audit officer in said notice,
- ii)/iii) Ledger of inward supply/ Outward supply of goods or services,
- iv) Returns forms like GST Form 3B, GSTR-1, GSTR-2 and GSTR-3 and GSTR-4 etc., maintained by the taxable person as per GST Act, Maintenance of Records Rules,
- v) Payments challans, vi) Ledger of Bank account,
- vii) Details of E way bill for the audit period for inward/outward supply
- viii) GST registration certificate details like principle place of business, branch and other place of details whether incorporate or not,
- ix) Ledger of stock maintained at Where house by the taxable person,
- x) Trial Balance for the audit period and Profit and Loss Account,
- xi) 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.



ANNEXURE-A

DOCUMENTS TO BE SUBMITTED

PART-A (FOR GOODS)

1. Annual Report & Director's Report
2. Profit & Loss Account
3. Balance Sheet
4. Notes to the Accounts
5. Gross Trial Balance
6. Cost Audit Report
7. Tax Audit Report
8. Copies of all GST Returns filed during the audit period

PART-B (FOR SERVICES)

1. Annual Report & Director's Report
2. Profit & Loss Statement
3. Balance Sheet
4. Notes to the Accounts
5. Gross Trial Balance
6. Cost Audit Report
7. Tax Audit Report
8. Tax Deducted at Source (Income Tax TDS) Certificates
9. Copies of all GST Returns filed during the audit period

ANNEXURE-B

THE FOLLOWING DOCUMENTS MAY KINDLY BE KEPT READY FOR VERIFICATION DURING THE TIME OF AUDIT

VERIFICATION OF RECORDS/REGISTERS DURING THE COURSE OF AUDIT VERIFICATION

(PROCEDURE / FORMATS SEPARATE FOR GOODS AND SERVICES)

PATR -I : SUPPLY OF GOODS

I. Records to be available in the marketing and outward supplies departments -

1. Purchase order
2. Price Circular
3. Delivery Challan
4. Material Transfer Note
5. Sales/outward supplies Book
6. Stores Ledger
7. Material receipt note/ goods receipt note/ Inspection cum receipt report
8. Material Return Note
9. Material Requisition Note (MRN) and Material Issue Note (MIN)
10. Waste Register
11. Physical Stock Verification Statement
12. Sub-contract Register / Job Work Register
13. Purchase Book
14. Purchase Return Book

II. Records to be verified in the stores department (Where applicable) -

1. Stores Ledger
2. Goods Receipt Note (GRN)/Material Receipt Note/Inspection Cum Receipt Report (ICRR)
3. Material Return Note
4. Rejected Goods Register
5. Waste Register
6. Physical Stock Verification Statement
7. Job work/Sub-contract Register

III. Finance & Accounts related records -

1. Ledgers
2. Debit Note
3. Credit Note
4. Journal Voucher
5. Internal Audit Reports
6. Purchase Book
7. Purchase Return Book
8. Income Tax Audit Report
9. Income Return
10. Fixed Assets Register
11. Monthly Stock Statement to Bank

IV. All records maintained under section 35 of CGST Act, 2017 and Rule 56 of CGST Rules, 2017.

PATR -II : SUPPLY OF SERVICES

RECORDS TO BE PRODUCED

- I. Marketing and sales department –
 1. Purchase Orders/Agreements/MOUs
 2. Outward supply book
- II. Stores department -
 1. Stores Ledger
 2. Job work/Sub-contract Register
- III. Finance & Accounts related records -
 1. Ledgers
 2. Debit Note
 3. Credit Note
 4. Journal Voucher
 5. Internal Audit Reports
 6. Purchase Book
 7. Purchase Return Book
 8. Income Tax Audit Report
 9. Income Return
- IV. All records maintained under section 35 of CGST Act, 2017 and Rule 56 of CGST Rules, 2017.

TAXPAYERS/UNITS AVAILING EXPORT PROMOTION SCHEMES

1. Purchase order/Agreements/MOUs
2. Sales / outward supply
3. Stores Ledger
4. Sub contract Register / Job Work Register
5. Ledgers
6. Debit Notes
7. Credit Note
8. Journal Voucher (JV)
9. Internal Audit Report
10. Purchase/Inward supply
11. Purchase Return Book
12. Tax Audit Report
13. Income Tax Returns





Inspect-Place of Business or any other place

- By Joint Commissioner or above
- Reason to believe
- Taxable Person has suppressed any transaction
- Authorize any officer in writing

Search and Seize

- If there are reason to believe
- Seal or Break the door/almirah/electronic device
- documents/ books/things (goods)
- If useful to any proceeding
- Retain-upto examination, inquiry or proceeding
- Return-within 30 days after issuing Notice
- Notice need to be issue within 6+6 months otherwise return the goods

Copies or take extracts

- Proper office may not allow
- If prejudicially affect the investigation

Cont....

AUDIT

Release of goods

- Provisional basis
- Execution of bond and furnishing of security
- or
- Upon payment of tax + interest + penalty

Hazardous and perishable goods, depreciation or constrains of storage

- Disposed of goods by notification
- Prepare inventory

Mock purchase of goods

- Authorized by commissioner
- To check tax invoice or Bill of supply
- Taxable person need to refund the amount of such purchase
- After returning the goods by department

•67(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.





Inspection of Goods in Movement-Sec.68



Intercept by Proper officer

- Value exceeding 50,000
- Need to produce documents and device

Arrest-Sec.69

- Arrest Order by Commissioner
- For Tax evaded , ITC availed OR utilized , Refund wrongly taken
- Shell be punishable
- Amount exceeds 5 Cr.

Cognizable and non-bailable

Imprisonment for 6 months to 5Yrs. with fine

- Amount 2 Cr. to 5Cr.

Non-Cognizable and bailable

Imprisonment for 6 months to 3Yrs with fine

- AC or DC has power to grant bail
- Offence u/s 132(1) clause a, b, c or d

a.supplies without issue of any invoice, in violation GST provisions, with the intention to evade tax;

b.issues any invoice or bill without supply in violation GST provisions leading to wrongful availment OR utilisation of ITC or refund of tax;

c.avails ITC using the invoice or bill referred to in clause (b) or fraudulently avails ITC without any invoice or bill;

d.collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;



Non cognizable and bailable offence Tax evades exceeds 2Cr. u/s 132(1)



- (d) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section,

Non cognizable and bailable offence



Tax evades 1 cr to 2Cr.

- in the case of an offence specified in clause (b), where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds 1 cr. but does not exceed 2 cr. , with imprisonment for a term which may extend to one year and with fine;

Tax evades –any amount

- falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

Where any person convicted of an offence u/s 132 again convicted then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Power to summon Sec. 70

- Proper officer can issue summon
- He needs to considers necessary

Access to Business Premises–Sec. 71

- Any officer, CA/CMA
- Authorized by JC or above
- For audit, scrutiny or verification

Offices to assist proper GST officer–Sec. 72

- All officers of Police, Railways, Customs,
- officers engaged in the collection of land revenue,



Demand & Recovery

CHAPTER XV



CONTENTS **CHAPTER XV OF CGST Act, 2017** **DEMAND**

SECTION 73 : Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts

SECTION 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts

SECTION 75 : General provisions relating to determination of tax.

SECTION 76 : Tax Collected but not paid to Government

SECTION 77: Tax wrong fully collected and paid to Central Government or State Government

SECTION 78: Initiation of recovery proceedings.

SECTION 79: Recovery of tax

SECTION 80: Payment of tax and other amount in instalments

SECTION 81: Transfer of property may be void

SECTION 82: Tax to be first charge on property

SECTION 83: Provisional attachment

SECTION 84: Continuation and validation of certain recovery proceedings



SHOW CAUSE NOTICE



Show Cause Notice



A notice served on the tax payer-Asking him-To why-A particular action should not be taken-by the department.

Circumstances under which SCN is issued?

S.No	SCN For	Form
1	Denial of Option to Pay Tax u/s. 10	GST-CMP-05
2	For Cancellation of Regular Registration	GST-REG-17
3	For Rejection of application for revocation of Cancellation of Registration	GST-REG-23
4	For Cancellation of Provisional Registration	GST-REG-27
5	For Disqualification of GST Practitioner	GST-PCT-03
6	Rejection of Refund Claim	GST-REF-08
7	Assessment under Section 63	GST-ASMT-14

SCN

THE FOUNDATION ON WHICH
THE SHOW CAUSE NOTICE IS
THE DEPARTMENT HAS TO
BUILD UP ITS CASE



Determination of tax not paid or short paid or erroneously refunded

Section 73: Applicable in case of non-payment or short payment of tax without fraud or willful-misstatement.

Section 74: Applicable in case of non-payment or short payment of tax with fraud or willful-misstatement.

Proper officer to issue a Show Cause Notice in both cases

Mere statement containing the non-payment or short payment can be served for subsequent periods instead of detailed show cause notice, only if the grounds raised are identical to the ones raised in the previous year.

Time limit for the proper officer to issue notice – at least 3 months prior to issuance of order

Time limit for the proper officer to issue notice – at least 6 months prior to issuance of order

Time limit for the proper officer to issue an order is within **three years from the due date / actual date of filing of annual return.**

Time limit for the proper officer to issue an order is **within five years from the due date / actual date of filing of annual return**

Determination of tax not paid or short paid or erroneously refunded – Sec 73

Situation- Sec. 73	Penalty Amount
Before issuance of show cause notice	No penalty
Within 30 days after the issuance of the show cause notice	No penalty
After 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs. 10,000 whichever is higher
Penalty @ 10% on self-assessed tax or any amount collected as tax has not been paid within a period of thirty days No penalty- Cir. No. 76/50/2018 dated 31 st Dec. 2018	

Situation- Sec. 74	Penalty Amount
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of show cause notice	25% of the tax amount
Within 30 days from the issuance of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)

SECTION 73

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts



Section 73(1)

- Any tax
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- for any reason, other than
- the reason of fraud or any wilful-misstatement or suppression of facts
- to evade tax,
- PROPER OFFICER shall serve notice on the person

Section 73(1) Contd..

- requiring him to show cause
- as to why
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty leviable as per the provisions of the Act.



What is the Time Limit for Issuance of Notice?

Section 73(2) to be read with Section 73(10)

73(2)

“at least three months prior to the time limit specified in subsection (10) for issuance of order”

73(10)

within three years from the due date for furnishing of annual return for the financial year to which the tax relates to
or
within three years from the date of erroneous refund.



SECTION 74

Determination of tax not paid or short paid or erroneously refunded or input tax credit⁴³ wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts



Year	Company A	Company B	Company C
2013	47	71	43
2014	41	65	25
2015	32	48	34
2016	44	35	60
2017	50	27	78



Category	Budget	Actual	Difference
Auto	\$200.00	\$90.00	\$110.00
Entertainment	\$200.00	\$32.00	\$168.00
Food	\$350.00	\$205.75	\$144.25
Home	\$300.00	\$250.00	\$50.00
Medical	\$100.00	\$35.00	\$65.00
Personal Items	\$300.00	\$80.00	\$220.00

Section 74(1)

- Any tax
- has not been paid or
- short paid or
- erroneously refunded, or
- where input tax credit has been wrongly availed or utilised
- by reason of fraud or
- any wilful-misstatement or
- suppression of facts to evade tax,
- PROPER OFFICER shall serve notice on the person

Section 74(1) Contd..

- requiring him to show cause
- as to why
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty equivalent to the tax. (100% of Tax as Penalty)





**What is the Time
Limit for
Issuance of
Notice?**

**Section 74(2)
to be read with
Section 74(10)**

74(2)

*“at least **SIX** months
prior to the time limit
specified in sub-
section
(10) for issuance of
order”*

74(10)

within a period of **FIVE YEARS**
from the due date for
furnishing of annual return
for the financial year to
which the tax relates to
or
within **FIVE YEARS** from the
date of erroneous refund.



Certain Explanations to 73 & 74

● Explanation 1.— For the purposes of section 73 and this section,—

- (i) - "all proceedings in respect of the said notice" - shall not include proceedings under section 132; (Punishment –Imprisonment, fine... etc)
- (ii) – If Proceedings initiated on Main person gets concluded, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

[Specific Penalty, General Penalty, Detention, Confiscation]

● Explanation 2.— For the purposes of this Act, the expression "suppression" shall mean

- A) non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
- B) failure to furnish any information on being asked for, in writing, by the proper officer

SECTION 75

General Provisions relating to Determination of Tax



General provisions relating to demand of tax – Sec 75

- Personal hearing can be adjourned when sufficient cause is shown in writing. However, such adjournment can be granted for a maximum of 3 times.
- The relevant facts and basis of the decision shall be set out in the order.



shall not be more than what is mentioned in the order and the grounds shall not go beyond what is mentioned in the notice.

- When the Tribunal / Court / Appellate authority modifies the amount of tax, correspondingly interest and penalty shall also be modified.
- Interest shall be payable in all cases whether specifically mentioned or not.
- The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

SECTION 75(1) - Exclusion of STAY PERIOD

- If service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal,
- the period of such stay shall be excluded in computing the period specified in
- 73(2), 73(10) & 74(2), 74(10)

SECTION 75(2) – 74(1) auto converts to 73(1)

- any Appellate Authority or Appellate Tribunal or court
- Concludes that notice under section 74(1) is not sustainable
- for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established
- Proper officer shall determine the liability as if notice was issued under Section 73(1)

SECTION 75(3) – Time to Pass Order on Remanded Matter

- 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.

Supreme Court on Natural Justice

"principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights.



SECTION 75(4) – Personal Hearing

- A Opportunity of “being heard” shall be granted
- when a request is received in writing
OR
- any adverse decision is contemplated against such person.

SECTION 75(5) – Adjournments

- if sufficient cause is shown by the person chargeable with tax,
- Officer shall grant time to the said person and
- adjourn the hearing
- for reasons to be recorded in writing.
- Maximum – 3 adjournments:

SECTION 75(6) – The proper officer, in his order, shall set out the relevant facts and the basis of his decision.



SECTION 75(7) –Order Cannot Travel beyond SCN

- 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 the grounds other than
- the grounds specified in the notice.



**OTHER
PROVISIONS
UNDER
SECTION 75**

Section 75(8)

If appellate fora modifies the demand amount, the modified demand only will be enforceable.

Section 75(9)

The interest on the tax liability /demand shall be payable **whether or not specified in the order** confirming the tax liability.

Section 75(10)

If orders not passed within 3/5 years as the case may be, adjudication proceedings are deemed to be concluded.



There is an issue Which is decided against the Revenue



(1) Decided by	(2) Appeal Filed with and Final Order
Appellate Authority	Appellate Tribunal
Appellate Tribunal	High Court.
High Court.	Supreme Court

Section 75(11)

AND it has an implication on the case in hand, then,
The time period between the order from the Col. (1) & Col. (3) shall be excluded from the time period of 3 Years / 5 Years as the case may be.

Section 75(12) – Straight Recovery???

- Notwithstanding anything contained in section 73 or section 74,
- where any amount of self-assessed tax in accordance with a return
- furnished under section 39 remains unpaid,
- either wholly or partly,
- or any amount of interest payable on such tax remains unpaid,
- the same shall be recovered under the provisions of section 79.

Ref: LC Infra Projects P Ltd Case [TS-776-HC-2019(KAR)-NT] + Jharkhand HC

Section 75(13) – Once penalty imposed under 73/74 no other penalty under this act shall be applicable for the same act.





SECTION 76

**Tax collected but not
paid to Government**



- Any amount representing tax shall be paid forthwith irrespective of the fact whether the supply was taxable or not.
- Proper Officer to Issue SCN asking why amount should not be demanded along with interest and penalty (100% of tax)
- After representation, officer to determine the amount and the person shall pay the amount so determined.
- Interest also to be paid as per Section 50.
- Personal hearing shall be granted where request is received in writing.
- Order to be issued within 1 Year from the date of issuance of SCN



- If issuance of order is stayed, the said period shall be excluded in calculating the one year time limit to pass the order.
- Proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- Person who has borne the incidence of tax shall claim refund as per Section 54.
- **NOTIMELIMITTOISSUE NOTICE.**

SECTION 77

**Tax wrongfully
collected and paid to
Central Government
or State Government.**



SECTION 77(1) – Wrong Head of Payment

- Nature of Supply was – Interstate
- Wrongly Understood as = Intra State
- Paid Wrongly = CGST + SGST/UTGST
- Liability was = IGST
- Resolution??
- Refund Application to be filed for claiming C/SGST .
- [Rule 89 of CGST Rules – (j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;]{Ref Sec. 19 of IGST Act – No Interest}



SECTION 77(1) – Wrong Head of Payment

- Nature of Supply was – Intrastate
- Wrongly Understood as = Inter State
- Paid Wrongly = IGST
- Liability was = CGST + SGST/UTGST
- Resolution??
- Refund Application to be filed
- [Rule 89 of CGST Rules – (j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;] {Ref Sec. 19 of IGST Act – No Interest}



SECTION 78

Initiation of recovery proceedings



SECTION 78

- Once an “order” is passed under this Act,
- Confirming the tax demand and/or interest and/or penalty
- The assessee shall pay the said amount within THREE MONTHS from the date of receipt of the order.
- If not paid, recovery proceedings shall be initiated.
- Proper Officer can give time less than three months to remit the tax in the interest of revenue (by mention in order).



SECTION 79

**Recovery of Tax
R/w. Rule 143 to 157 of
CGST Rules.
All DRC Forms**



SECTION 84 – Continuation and validation of certain recovery proceedings

Where any notice of demand is served and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

- Where such Government dues are enhanced the Commissioner shall serve another notice of demand in respect of enhanced amount and any recovery proceedings be continued without notice of any fresh notice.
- Where such Government dues are reduced it shall not be necessary to serve a fresh notice of demand; the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending; any recovery proceedings be continued without notice of any fresh notice.

SECTION 79 – Modes of Recovery

- a) Deducting from the amount due to the person.
- b) Detaining & Selling the goods of such person.
- c) Third party recovery viz., Debtors, Money holders
 - i) Everyone is bound by this notice whether it is Post Office, Bank, Insurance Co...
 - ii) No rules and regulations will be necessary.
 - iii) If not honoured, will be deemed to be a defaulter.



SECTION 79 Contd....

iv. The Officer is empowered to revoke, amend the notice or extend the time for making payment at any time.

v. If the person disobeys the notice and makes payment directly to the person in default shall be personally liable to Government. [Amt Paid / Amt Due by him w.e.]

vi. If nothing is due to person in default, he should prove to the satisfaction of the officer.

Officer can seize movable or immovable property of the person in default. If within 30 days even if part amount is not paid, the asset can be disposed by the officer.

Inform collector to collect as if arrears of land revenue

ix. Inform Magistrate to collect as if it was a fine.

SECTION 79 Contd....

2) Encashment of Bond / any Instrument executed

3) Any State / UT Officer is empowered to recover as if

it was arrears of SGST/ UTGST and remit to Government in such manner and proportion.



SECTION 80 – Payment in Installments

- Application to be filed by the tax payer
- Commissioner to give order in writing
- By Extending / Allowing time to pay any amount
- OTHER THAN “Liability self assessed in any return”
- Max 24 Monthly Instalments subject to interestpayment.
- Even if one month defaulted, extension stops and recovery begins – NO NOTICE.



SECTION 81 – Transfer of Property may be void by GST Department

- Where a person, after any amount has become due from him,
- creates a charge on or parts with the property belonging to him or in his possession
- by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties
- in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.



SECTION 82 – Tax to be first charge on property

- Notwithstanding anything to the contrary contained in any law for the time being in force,
- save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government
- shall be a first charge on the property of such taxable person or such person. (31 of 2016.)



SECTION 83 – Provisional attachment of Property / Bank Account

- Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV,
- the Commissioner is of the opinion that
- for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing,
- attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.
- Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

CHAPTER XVI

LIABILITY TO PAY IN CERTAIN CASES



SECTION 85 – Liability in case of transfer of business

- (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.
- (2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

SECTION 86 – Liability of agent and principal

- Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.



SECTION 87 – Liability in case of amalgamation or merger of companies

- (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
- (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.



SECTION 87 – Liability in case of amalgamation or merger of companies

- (1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company ("liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.
- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- (3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

SECTION 89 – Liability of directors of private company

- (1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- (2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

SECTION 90 – Liability of partners of firm to pay tax

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

SECTION 91 – Liability of guardians, trustees, Etc.

- Where the business
- in respect of which any tax, interest or penalty is payable
- is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person,
- the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person,
- as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

SECTION 92 – Liability of Court of Wards, etc

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

SECTION 93 – Special provisions regarding liability to pay

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then- (31of 2016.)

a)if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

b)if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Continued.....SECTION 93

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution. (31 of 2016.)

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,- (31 of 2016.)

a)is the guardian of a ward on whose behalf the business is carried on by the guardian; or

b)is a trustee who carries on the business under a trust for a beneficiary,

then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

SECTION 94– Liability in other cases

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business–

a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

Continued....SECTION 94

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-

a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

SECTION 94– Liability in other cases

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.– For the purposes of this Chapter,–

(i) a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm; (6 of 2009.)

(ii) "court" means the District Court, High Court or Supreme Court.



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Thank You

Please share your views at 9911-283-111

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