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Nov'24

Questions & Answer

AUDIT & ASSESSMENT



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Question and Answer

AUDIT

Section 65: Audit by tax authorities**Question 1.**

Prithviraj Ltd., registered under GST in Uttar Pradesh, is served a notice for audit by the tax authority under GST law on 10th July. The records and other documents as sought by the tax authority have been made available by Prithviraj Ltd. on 25th July. The tax authority visits the office of Prithviraj Ltd. located in Noida, Uttar Pradesh on 8th August for conducting audit.

Determine the time-limit within which the audit under section 65 of the CGST Act, 2017 is required to be completed assuming that no extension is permitted in the given case.

(CA Final RTP Nov 21)

Answer:

As per section 65(4) of the CGST Act, 2017, audit shall be completed within a period of 3 months from the date of commencement of the audit. Further, commencement of audit means the later of the following:

- (a) the date on which the records and other documents, called for by the tax authorities, are made available by the registered person, or
- (b) the actual institution of audit at the place of business of the taxpayer.

Accordingly, in the given case, date of commencement of audit is later of:

- (a) the date on which the records and other documents, are made available by Prithviraj Ltd., i.e., 25th July, or
 - (b) the actual institution of audit at the place of business of Prithviraj Ltd., i.e., 8th August.
- Thus, date of commencement of audit is 8th August.

Hence, audit shall be completed within 3 months from the date of commencement of the audit (8th August).

Question 2.

What is meant by commencement of audit?

(CBIC FAQ)

Answer:

The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

- (a) the date on which the records/accounts called for by the audit authorities are made available to them, or
- (b) the actual institution of audit at the place of business of the taxpayer.

Miscellaneous

Question 3.

Who can conduct audit of taxpayers? Or

How many types of audits are prescribed under GST act? Briefly explain each one of them.
(Ca final Nov 18 - Old) & (ICAI study material)

Answer:

There are two types of audits prescribed in the GST Act(s) as explained below:

- (a) **Audit by Department:** The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Sec 65 of the CGST Act)
- (b) **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department (Section 66 of the CGST Act).

ASSESSMENT

Section 60: Provisional assessment

Question 4.

Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12th January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies the goods on 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of Rs. 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9th April. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of Rs. 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 05th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

(RTP NOV 2018) & (ICAI study material) (CA Final RTP May 23-Similar)

Answer:

Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25th January under provisional assessment is 20th February.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of the consignment of goods supplied:

$$= \text{Rs. } 1,80,000 \times 18\% \times 48/365$$

$$= \text{Rs. } 4,261 \text{ (rounded off)}$$

If, in the given case, it is assumed that consequent to the final assessment order passed on 21st March, a tax of Rs. 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows:

Section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e., tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05th June) within 60 days from the date of receipt of application of refund (09th April), interest is not payable to Kulbhushan & Sons on tax refunded.

Question 5.

Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 20XX. The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 20XX.

Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 20XX, a tax of Rs. 1,20,000 and Rs. 1,50,000 became refundable on 1st and 3rd consignments, whereas a tax of Rs. 1,20,000 became due on 2nd consignment. Divy Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 20XX and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it of 1st consignment on 8th September, 20XX, whereas of 3rd consignment on 18th September, 20XX. Customers of Divy Trader who purchased the consignments have not taken ITC. Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divy Trader.

(ICAI Practice Paper May 20)

Answer:

Where tax becomes due consequent to order of final assessment, interest is payable @ 18% p.a., from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 28.04.20XX under provisional assessment is 20.05.20XX.

Thus, interest payable in respect of 2nd consignment

= Rs 1,20,000 × 18% × 53 [21.05.20XX - 12.07.20XX]/365
= Rs 3,136 (rounded off)

Further, section 56 of CGST Act, 2017 provides that where tax becomes refundable consequent to the order of final assessment, interest is receivable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of refund application till the date of refund of such tax.

In the given case, since refund of tax of 1st consignment has been paid on 08.09.20XX which is within 60 days from the date of receipt of application of refund (12.07.20XX), interest is not receivable on tax refunded in respect of 1st consignment.

However, interest receivable in respect of 3rd consignment is as follows:

60 days from the date of receiving the refund application expire on 10.09.20XX.
= Rs 1,50,000 × 6% × 8 [11.09.20XX-18.09.20XX]/365
= Rs 197 (rounded off).

Section 61: Scrutiny of returns

Question 6.

What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?

(CA final May 19 - Old) & (ICAI study material - amended)

Answer:

If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:

- (i) conduct audit of the registered person; or
- (ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant/Cost Accountant nominated for this purpose by the Commissioner or
- (iii) exercise the powers of inspection, search and seizure with respect to the registered person, or
- (iv) proceed to determine the tax & other dues of the registered person under Sections 73/74 of the Act.

Section 63: : Assessment of unregistered persons

Question 7.

Explain the provisions relating to assessment of unregistered persons by the proper officer under section 63 of the CGST Act, 2017.

(CA Final July 21) - updated

Answer:

Where a taxable person-

- fails to obtain registration even though liable to do so; or
- whose registration has been cancelled for any of the specified reasons, but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said taxable person to the best of his judgement for the relevant tax periods.

Specified reasons for cancelation are as under

- (a) a RP has contravened such (rule 21) provisions of the Act/the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 (Composition supplier) has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or
- (d) any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
- (e) Registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

However, no such assessment order shall be passed without giving the person an opportunity of being heard.

Question 8.

A summary assessment order has been issued against Mr. Kanhaiya Mittal, a taxable person under GST. Mr. Kanhaiya Mittal does not wish to take recourse to appellate machinery against the assessment order.

He has approached you for seeking advice on whether there is any other recourse available to him against the said summary assessment?

Answer:

Yes, Mr. Kanhaiya Mittal has other recourse available to him against summary assessment order other than appellate remedy. Mr. Kanhaiya Mittal against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within 30 days of the date of receipt of the order vide section 64 of CGST Act. If the said officer finds the order erroneous, he can withdraw it and direct the PO to carry out determination of tax liability in terms of section 73/74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Multiple Choice Question

1. M/s XYZ Pvt. Ltd. is a registered company under GST. They have been diligent in filing their GST returns and maintaining proper records of their transactions. However, during the last financial year, there were some discrepancies noted in their tax credit claims. An audit of M/s XYZ Pvt. Ltd. can be undertaken by:
 - a) The Commissioner
 - b) Any officer authorised by the Commissioner, by way of a general or a specific order
 - c) Both A and B
 - d) None of the above

2. M/s ABC & Co. is registered under GST. The company has been selected for an audit by the GST department due to inconsistencies in their tax filings. The audit commenced on July 1st, 2024. The audit team is working diligently to complete the audit within the stipulated time frame. However, due to the complexity of the records, the audit team anticipates that they might need an extension to complete the audit comprehensively. What is the time limit within which audit by dept shall be completed and also mention if there is any extension that can be granted by the Commissioner?
 - a) 3 months, 3 months
 - b) 6 months, 3 months
 - c) 3 months, 6 months
 - d) 3 months, no extension

3. M/s PQR Ltd. is a registered entity under GST. The company underwent an audit which began on March 1st, 2024. During the audit, several discrepancies were identified related to input tax credit claims. The proper officer informed M/s PQR Ltd. about these discrepancies and provided them with an opportunity to reply. M/s PQR Ltd. submitted their reply with explanations and supporting documents. After reviewing the reply, the proper officer finalized the audit findings. The audit concluded on June 1st, 2024. After finalizing the audit findings, within how many days should the proper officer inform M/s PQR Ltd. about the audit findings and the reasons for such findings?
 - a) 15 days
 - b) 30 days
 - c) 45 days
 - d) 60 days

4. If the audit results in the detection of tax not paid or short paid, erroneously refunded, or input tax credit wrongly availed or utilized, what action can the proper officer initiate?
 - a) Issue a warning
 - b) Initiate action under section 73 or section 74
 - c) Impose a penalty
 - d) None of the above

5. M/s DEF & Associates is a registered company under GST. The Commissioner nominated a Chartered Accountant (CA) to conduct an audit of M/s DEF & Associates. The CA began the audit on January 1st, 2024, and diligently worked through the records. The CA is required to submit a signed and certified report of the audit to the Assistant Commissioner within 90 days. However, due to the complexity and volume of transactions, the CA anticipates needing more time to complete the report accurately.

The CA nominated by the Commissioner is required to submit the audit report within:

- a) 30 days
- b) 60 days
- c) 90 days
- d) 120 days

6. M/s GHI Enterprises is under audit by a Chartered Accountant (CA) nominated by the Commissioner to review their GST compliance. The audit involves a thorough examination of the company's financial records, requiring significant time and resources. There are concerns about who will bear the costs associated with this audit, including the remuneration for the CA's services.

Who is responsible for bearing the expenses of the audit, including the remuneration of the Chartered Accountant or Cost Accountant?

- a) GHI Enterprises
- b) The Chartered Accountant or Cost Accountant conducting the audit will do it free.
- c) The Commissioner
- d) Shared equally between the registered person and the Commissioner

7. M/s JKL Pvt. Ltd. has been under provisional assessment by the GST department due to discrepancies in their tax filings. The provisional assessment order was communicated to M/s JKL Pvt. Ltd. on January 1st, 2024. The proper officer is now working to finalize the assessment within the stipulated time frame. However, due to the complexity of the case, it might be necessary to extend the period for finalizing the assessment.

The proper officer is required to pass the final assessment order within how many months from the date of communication of the provisional assessment order?

- a) 3 months
- b) 6 months
- c) 9 months
- d) 12 months

8. M/s JKL Pvt. Ltd. has been under provisional assessment by the GST department due to discrepancies in their tax filings. The provisional assessment order was communicated to M/s JKL Pvt. Ltd. on January 1st, 2024. The proper officer is working to finalize the assessment but anticipates needing more time due to the complexity of the case. What is the timelimit within which he needs to issue Final assessment order and are there any extensions available, who will have the authority to grant the same

By P.O within 6 months from the date of communication of Provisional assessment order

By the Joint/Additional Commissioner for a further period not exceeding _____ months, and

By the Commissioner for such further period as he may deem fit not exceeding _____ years.

- a) 3 months, 3 months; 2 years
- b) 6 months, 6 months; 4 years
- c) 6 months 6 months; 5 years
- d) 3 months, 3 months, 2 years

9. M/s XYZ Ltd. is undergoing provisional assessment under GST. The provisional tax liability was assessed at a GST rate of 18% on a supply amount of ₹1,000,000. However, upon finalization of the assessment, the GST rate was determined to be 28%. M/s XYZ Ltd. is required to furnish a bond to cover the differential tax payable upon finalization. Based on the given information, what is the amount of the bond that M/s XYZ Ltd. needs to furnish?
- ₹100,000
 - ₹280,000
 - ₹180,000
 - ₹280,000
10. In the case of a discrepancy found during the scrutiny of a return, the proper officer issues a notice to the taxpayer. What is the maximum timeframe allowed for the taxpayer to provide an explanation in response to the notice?
- 15 days
 - 30 days
 - 60 days
 - 90 days
11. If a registered person receives an assessment order passed on a best judgment basis, what is the maximum timeframe allowed to furnish a valid return without incurring additional late fees, after which the assessment order will be deemed withdrawn?
- 30 days + EXTENSION -30Days
 - 40 days + EXTENSION -40Days
 - 90 days + EXTENSION -50Days
 - 60 days+ EXTENSION -60Days
12. M/s ABC Pvt. Ltd was a person liable to register but it didnot register even after crossing its threshold limit.The FY22-23 was the period for which such tax not paid relates to it . However, due to various reasons, they defaulted in filing returns for multiple tax periods during that financial year. According to the GST regulations, if a taxpayer fails to file the return, the Proper Officer has the authority to make a best judgment assessment. By what date can the Proper Officer make a best judgment assessment if the company defaults in filing returns for any tax period during that year?
- December 31, 2026
 - December 31, 2027
 - December 31, 2028
 - December 31, 2029

Answer:

Q.	Ans	Reason
1.	c	Under GST law, the audit of any registered person can be undertaken either by the Commissioner or by any officer authorized by the Commissioner through a general or specific order. This ensures that audits can be conducted efficiently and by appropriate authorities to ensure compliance with GST regulations.

2.	c	Under GST law, an audit must be completed within 3 months from the date of commencement. However, if the audit cannot be completed within this period, the Commissioner has the authority to extend the period by a further maximum of 6 months. This allows for a total possible audit duration of up to 9 months from the date of commencement.
3.	b	Upon conclusion of the audit, the proper officer is required to inform the registered person about the audit findings and the reasons for such findings within 30 days. This communication should also include information about the rights and obligations of the registered person in response to the audit observations.
4.	b	If the audit results in the detection of tax discrepancies such as tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer can initiate action under section 73 (dealing with non-fraud cases) or section 74 (dealing with fraud cases) of the GST Act. These sections outline the procedures for demand and recovery of taxes.
5.	c	The nominated Chartered Accountant or cost accountant is required to submit a report of the audit, duly signed and certified, to the Assistant Commissioner within a period of 90 days.
6.	c	The expenses of the examination and audit of records, including the remuneration of the Chartered Accountant or Cost Accountant, are determined and paid by the Commissioner. This ensures that the costs of the audit process do not burden the registered person being audited.
7.	b	The final assessment order must be passed by the proper officer within a period of 6 months from the date of communication of the provisional assessment order.
8.	b	The proper officer must pass the final assessment order within 6 months from the date of communication of the provisional assessment order. This period can be extended by the Joint/Additional Commissioner for a further period not exceeding 6 months. If additional time is still required, the Commissioner can extend the period for such further period as he may deem fit, not exceeding 4 years, based on sufficient cause shown and reasons recorded in writing.
9.	a	The bond is a document whereby the taxpayer binds himself (i.e., agrees) to pay the differential tax, if any, payable on finalization of the provisional assessment.
10.	b	According to the regulations, the proper officer shall issue a notice informing the taxpayer of the discrepancies and seeking an explanation within a maximum timeframe of 30 days from the date of service of the notice. The proper officer may permit a further period if necessary, but the initial limit is 30 days.

11.	d	A registered person must furnish a valid return within 60 days of the service of the assessment order passed on a best judgment basis for the order to be deemed withdrawn. If the valid return is submitted within this initial 60-day period, the assessment order is considered withdrawn, but the liability for payment of interest or late fees continues. If the return is not furnished within this timeframe, the registered person may do so within a further period of 60 days, but this requires payment of an additional late fee.
12.	c	If M/s ABC Pvt. Ltd. defaults in filing the return for any tax period in the financial year 2022-23, the period for making a best judgment assessment is reckoned from the due date of filing the Annual Return, which is December 31, 2023. Therefore, the Proper Officer can make a best judgment assessment on or before December 31, 2028

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