

SCRUTINY ASSESSMENT & APPEALS



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Introduction:-

These days, many taxpayers are getting GST return discrepancy notices in the form of GST ASMT-10. The GST Law came into force in July 2017; however, the department has now started scrutinizing the GST returns filed during the last five years, if he finds any error, he will issue a scrutiny notice to the registered tax payer demanding an explanation. We would understand the provisions and impact of such type of notices in detail.

What is GST ASMT-10?

Form GST ASMT-10 is the notice issued under **Section 61** of the CGST Act, 2017, read with **Rule 99** for intimating discrepancies in the GST returns filed by the taxpayer and seeking an explanation for same. The tax officer can send the notice to the taxpayer via SMS or Email.

As per section 61, a GST Officer scrutinises the GST returns filled by the tax payer based on certain risk parameters. This assessment is undertaken to verify the correctness of details submitted in GST returns and find discrepancies in the return. Few examples of discrepancies against which notice can be issued are as follows: -

- Difference in Tax Liability reported in GSTR-1 and GSTR-3B
- Difference in ITC claimed in GSTR-3B and GSTR-2B/GSTR-2A
- Difference in Tax Liability as per E-Way Bill and GSTR-3B
- High deviation in Tax deposited during two or more periods
- Claimed ineligible exemption or ineligible ITC etc.

If such discrepancies indicate a high risk of default or fraud, then the officer can proceed to this assessment by issuing notice under GST ASMT -10.

GST ASMT-10 is merely a notice where discrepancies in GST Returns filled by the tax payer are found and intimated to the tax payer; asking for an explanation for the same. The Proper Officer may quantify the amount of tax, interest or any other amount payable by the taxpayer in the GST ASMT-10 itself. However, there is no personal hearing in this assessment.

Contents of Form GST ASMT -10:

- **Basic Details:** - GSTIN, Name, Address and Tax Period
- **Discrepancies Observed:** - Details of discrepancies observed and asking for explanation
- **Details of Tax Officer:** - DIN, name, Signature and designation of tax official issuing Notice

How to file a reply to GST ASMT -10?

As per section 61, tax payer is required to file a reply via GST ASMT -11 online on GST portal within 30days of its issuance. He may request for extension of not more than 15 days.

However, 2 scenarios may arise here: -

- Tax Payer agrees with the discrepancies noted: - Tax payer is required to pay the tax, interest or any other amounts as specified in GST ASMT -10 via DRC-03 and then inform the Tax officers via ASMT 11. Payment can be made via following ways:
 - Pay tax in Form DRC 03
 - Furnish Invoice/ debit note/ amended Invoice / amended debit note in GSTR 1
 - Pay tax while filing GSTR3B
- Tax payer Disagrees with the discrepancies noted: - Tax payer may provide explanation and workings& reconciliations along with the supporting documents to the Proper Officer via GST ASMT - 11

Procedure after replying to Scrutiny Notice:

After submitting reply under GST ASMT -11, there can be again 2 scenarios: -

- Proper Officer is satisfied with the response, then he'll drop the proceedings by issuing an order under GST ASMT - 12, intimating the same to the tax payer
- If Proper officer finds that reply is not satisfactory; then he may take appropriate actions under following sections: -
 - Section 65 – Audit by Tax Authorities
 - Section 66 – Special Audit
 - Section 67 – Inspection, Search or Seizure

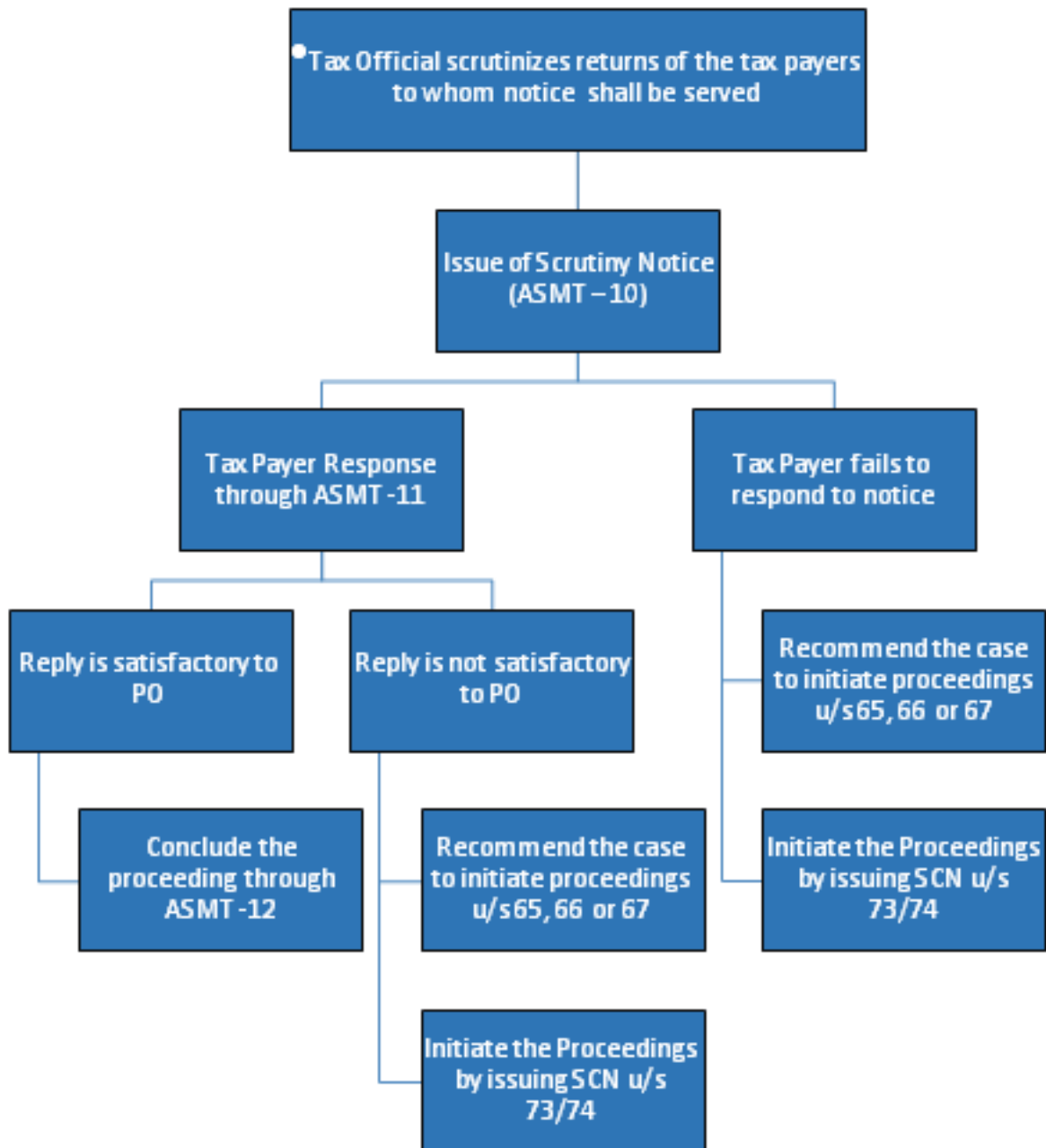
Based on the findings under above sections, actions can be initiated under section 73 (Non fraudulent cases) or section 74 (fraudulent cases) of the CGST Act, 2017.

However, there is no timeline for the issue of GST ASMT -12. The proceedings get concluded with the receipt of GST ASMT-12.

Consequences of not Responding to a Scrutiny Notices:

If the taxpayer does not respond to the scrutiny notice, then the tax officer will take action under section 73 (non-fraudulent) and 74 (fraudulent). He can issue a show-cause notice in form DRC-1 demanding the tax dues, together with interest and penalty. The amount of penalty will vary depending upon the grounds of the discrepancy found. Alternatively, the officer can recommend audits under section 65, 66 or 67.

The above discussion can be summarised as below: -



Appeals under GST:

Any person aggrieved with the order passed by the adjudicating authority under the GST Act; can file an appeal in GST before the First Appellate Authority. Therefore, if the tax payer is aggrieved by the order passed u/s 73 or sec 74 he may opt to make an appeal before the First Appellate Authority

Appealable Orders:

- Enforcement Order
- Assessment or Demand Order
- Registration Order
- Refund Order
- Assessment Non Demand Order
- LUT Order

How to file an Appeal:

An appeal can be filled in Form GST APL -01, along with relevant documents. As soon as appeal is filled, provisional acknowledgment will be issued immediately. However, the final acknowledgment, indicating the appeal number shall be issued in Form GST APL-02, only after the manual submission of Form GST APL - 01 along with attested copy of order appealed against within 7 days of issuance of provisional acknowledgment. The date of filing of appeal shall be the date of submission of such copy.

Time lines to file an Appeal:

The time limit to file an appeal is within 3 months from the date of communication of order by adjudicating authority. However, delay of maximum upto 1 month is allowed that to only after furnishing of a justified reason of delay along with suitable evidence.

Appeal Fees: - No Appeal fee is levied as such.

Requirement of Pre-Deposit before filing an Appeal:

During filing an appeal, a specific amount has to be paid as pre-deposit as per below:

- In respect of the amount admitted – 100% of tax, interest, fine, fee and penalty
- In respect of the disputed amount – 10% of the tax in dispute, subject to maximum of Rupees 25 cr.

However, in case with respect to detention & seizure – 25% of the penalty as specified in the order needs to be paid.

When the pre -deposit amount is paid by the appellant, then the recovery proceedings for the balance amount shall be deemed to be stayed.

Adjournment of Hearing:

The Appellate authority may adjourn the hearing upto three times on showing of sufficient cause at any stage of hearing.

Appellate Authority shall give an opportunity to the appellant of being heard

Can additional grounds be added during the hearing?

If the authority is satisfied that the omission of that ground was not wilful or unreasonable, then additional grounds can be added at the time of hearing.

Time limit to issue an order:

Every appeal shall be decided within a period of one year from its filing, if it is possible to do so for the authority. Every order passed under section shall be final and binding on all the parties involved subject to sections 108, 113, 117 or 118

Refund of Pre-deposit:

When the pre deposit is amount liable to be refunded according to appellate authority's order, the tax payer may file a refund application then the amount of pre-deposit shall be refunded along with interest from the date of payment of such amount till the date of refund.

Not satisfied with the order of First Appellate Authority:

If the aggrieved person is not satisfied with the order of the First Appellate Authority too, then he may go for an appeal before -

- Appellate Tribunal
- High Court
- Supreme Court

The Appellate Tribunal is not yet constituted; so currently appeals cannot to be filled with Appellate Tribunal. Therefore, the time limit to make an application to appellate tribunal will be counted from the date on which President or the State President enters the office - this has been clarified vide Circular No. 132/2/2020 GST dated 18.03.2020

Conclusion: -

In recent times, a lot of taxpayers are getting scrutiny notices and the taxpayers are ignoring the same. It is advised not to ignore the ASMT 10 notices at all. It can cost taxpayers heavily in the form of time, efforts and tax liabilities if not dealt within a time bound manner.

