PECULIAR ISSUES RAISED DURING GST DEPARTMENTAL AUDITS

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Tax statutes require a robust system of checks and balances to prevent revenue leakages and ensure optimal compliance. Therefore, in addition to the routine scrutiny and assessment modules and the provisions relating search, inquiry, seizure, etc., GST law also contains provisions for departmental audit of registered taxpayers.

Legal Provisions

As per section 65 of CGST Act and Rule 101(3) of GST Audit Rules, the commissioner or an officer authorized by him can conduct a GST audit to verify the details of the 'records' and the 'books of account' of the registered person, along with the assistance of the team of officers and officials accompanying him.

Upon the conclusion of the GST audit, the authorized officer shall inform the findings, rights and obligations, and the reasons for the given findings to the registered person, within a period of 30 days in FORM GST ADT-02. If the registered taxpayer is found at fault, such as wrongly availed/utilized ITC, the authorized officer can proceed as per the procedure laid down under section 73 or Section 74 of GST Audit Rules.

We shall now discuss a few peculiar issues found in GST Departmental Audit. The queries can be briefly bifurcated into the following categories:

1. Mistakes/Technical issues in compliance
2. Alternative interpretation of statutes by department
3. Data/Formats required by department which may not be readily available in normal course

1. Mistakes/Technical issues in compliance

A majority of queries raised in observations issued by the GST department during audit relate to mistakes/technical issues in compliance such as incorrect/incomplete returns, etc.

A common issue found is that there is a difference between the figures of outward supply reflected in GSTR 1 returns as compared to those reflected in GSTR 3B returns. This may be due to a number of factors such as entry of cancelled invoices in GSTR 1 or non-consideration of credit notes etc. In this background, a comparison of GSTR 1 vs GSTR 3B becomes crucial while preparing for departmental audits and necessary explanations/technical issues may be kept ready for production before department officers.

Another common issue that seems to come up during verification of input tax credit availed by taxpayers pertains to reconciliation of GSTR 2A. There have been a few cases where, while reconciling with GSTR 2A, credit notes have been uploaded by vendors for which taxpayer has no record. These may have been either missed or disregarded. The department is taking a view that since input credit is reversed by vendor it should be reversed by the taxpayer since tax is not received by the government.

Taxpayers may keep ledger confirmations etc. ready to present before tax authorities. Additionally, reliance may be placed upon the dates on which returns containing such mismatched credit notes have been filed since especially in the initial years with extended deadlines, many cases are noticed with credit notes filed by the vendors beyond filing of annual returns by taxpayer.

Under notification no 41/2017 Integrated Tax (Rate) a taxpayer being supplier of goods to an exporter for the purpose of export supply is eligible to collect tax at the rate of 0.1% if certain conditions are fulfilled. One of the conditions mentioned in the notification is that on completion of export of the goods the recipient shall provide a copy of the shipping bill or bill of export containing invoice and GSTIN details of the supply by registered supplier to the supplier and their jurisdictional officer. It is noted that such a copy is generally given to the supplier but the requirement of informing the jurisdictional officer is either delegated by the recipient to the supplier or skipped altogether. Taxpayers may still communicate to the jurisdictional officers of the vendor since there is no time limit prescribed for such communication under the notification. However, it must be before the point is raised by the audit team.

2. Alternative interpretation of statutes by department

This being the first set of instances of scrutiny into the books of the taxpayers by the department there were bound to be many interpretational issues even in the backdrop of over half a decade of GST being in force. Some common points of difference include the consideration for certain transactions as supply, admissibility of input tax credit, comparison of time of supply/invoicing time limit provisions vis-à-vis 26AS/AIS/TIS, etc.

The GST department is looking at “foreign bank charges” for taxing the same under reverse charge mechanism. In case of exporters receiving foreign remittances, a portion of the remittance receivable is deducted by the foreign intermediary bank as charges for services provided. Here, there is no contact between the exporter and the foreign bank. It is engaged by or has a connection with both the importer and exporter's banks but is not known or engaged by the exporter. There is no privity of contract between the supplier of service being the foreign bank and the recipient being the exporter. However, it is the department's contention that this transaction squarely falls within the definition of supply and being import of service is liable for tax to be paid on reverse charge. There are various judgements under the erstwhile service tax law that have concluded in favour of the taxpayer. Although few concepts and scope of supply may differ under GST regime, the rationale and approach of the judgements would be a good point of argument for taxpayers to take note and utilize.

The GST department is also looking to have input tax credit availed on branded items of marketing such as stationery, pamphlets, brochures etc

Reliance is placed upon by the department on provisions of Sec. 17(5) of the act where free goods supplied without a consideration would not be eligible for the availment of input credit. Here, the department clearly ignores the fact that these inputs are not given away freely/ without any consideration. The cost of marketing which involves the distribution of these items is duly considered and built into the sale consideration of items marketed for sale.

Some other key issues include points such as interest calculations on cash vs ITC components of liability offset, GST on corporate guarantees, demands raised under Sec. 73 vs Sec. 74, etc. A list of such contentious issues may be compiled from experience and due preparation towards defending positions must become practice during the time compliance exercises are carried out.

3. Data/Formats required by department which may not be readily available in normal course

The availability of data is the cornerstone of smooth assessments. In the early days of the GST regime, the was a lot of ambiguity with regard to requirements and applicability of various provisions. Due to this, a lot of the data required by the department in audits may or may not be readily available or in some cases be available at all. Further, in case of specific detailed requirements, the preparation of data may be time-consuming, bordering on practically impossible.

Some of the aspects looked at by the departments are listed as follows:

a. Ratio of inwards supplies to corresponding outward supplies with percentage-wise bifurcations

b. Workings for DRC-03s that may have been filed at various times during the respective periods or during filing of annual returns or any previous proceedings

c. Trial balances (Including state wise trial balances).

d. Statements/Workings for payment to suppliers within 180 days.

e. Notes on Financial and compliance controls within the organization.

f. Workings for identification of credits as common credits and their proportionate reversal against exempt or nil-rated supplies.

g. Workings for receipt of consideration within prescribed time limits in case of export supplies.

h. Notes on Cost Centers and centers of carrying out PAN-India processes for determining inter branch supplies.

i. Workings for mapping of credit/debit notes against invoices to ensure they are within time limits.

A big issue faced in this regard is that even where data is available it is being required to be submitted in very specific formats by the department. Since audits are a time-bound process, it puts a lot of pressure on compliance teams, especially where the taxpayers are relatively unorganized/smaller to the extent of not having specific teams dedicated for compliances. A stand can be taken to submit the data in a format where it is capable of being understood and serves the purpose for which it is required for. However, convincing department officials for this remains a challenge in the face of time-limes faced by them for completion of audit process.

Departmental audits are in their nascency and hence new issues and challenges will continuously come up for sometime until the taxpayers, consultants and department officials themselves become more familiar and therefore confident about what processes would be followed and what data would be required. Until then, some good practices to follow could be:

1. Clear, written and continuous communication with the department officials regarding their requirements and data available.
2. Preparing detailed working on any contentious issues while preparing for compliances.
3. Ensuring proper compliances and timely communication of issues with all stakeholders.
4. Maintaining records of time-lines/extended time-lines or exemptions for various compliances.

5. Structuring of Master Data and putting in a strong data structure that captures various aspects of day-to-day transaction that may form part of some reporting under some compliance or may be required as proof for claiming exemptions or benefits, etc. later on.

6. Periodic health check of compliances by competent independent professionals.

7. Seeking advance rulings on controversial issues may also be an effective tool for avoiding surprises at a later date.

GST Audits are in place to stop revenue leakages. They are also playing a major role in approach of various stakeholders towards preparation and tackling GST compliances. Taxpayers and professionals need to be vigilant and make themselves aware of the prevailing issues and prepare accordingly.

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