

ASSESSMENT & DEMAND UNDER GST LAW



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I-Assessment

Assessment means determination “accurate tax liability.” Assessment procedure is a mechanism to work out the actual tax liability payable by taxpayer. It can be either self assessed or can be determined by department. The main object of Assessment Procedure is collect the revenue effectively, efficiently & accurately.

Assessment has been divided into different categories which are as follows :-

1. Self Assessment U/s. 59:-

In self assessment the tax payer shall calculate the tax liability on their own & show the same in the relevant returns filed by them.

2. Provisional Assessment U/s. 60:-

In provisional assessment tax payer is unable to identify the tax liability (i.e. unable to identify tax rate, value of taxable goods / services & tax applicable thereon). The taxpayer approaches the concerned assessing officer for determination of tax liability. Assessing Officer then passes the provisional order towards payment of tax liability. Based on provisional assessment taxpayer pays the tax. Assessing officer shall pass the provisional assessment order within 90 days from the date of receipt of request from taxpayer. Provisional Assessment Order shall contain in detail working how the tax liability has been arisen, what value is considered for goods / services & applicable tax rate.

- (1) Every registered person shall apply online on GST Website in Form GST ASMT – 01 for requesting the officer to determine the liability under sub-sec (1) of Sec – 60.
- (2) The proper officer on receipt of application filed under sub rule (1) of Sec – 60, shall issue notice in FORM GST ASMT – 02 requiring the taxpayer to provide additional details if required. The taxpayer shall file the reply in GST ASMT – 03. The proper officer if desire can also ask the taxpayer to meet in personal.
- (3) Post submission of response by taxpayer the proper officer shall examine the same & pass order in FORM GST ASMT – 04 allowing the taxpayer to pay the tax on provisional basis.
- (4) Once the order is been passed then the taxpayer shall execute a bond in accordance with sub section (2) of Sec – 60 in FORM GST ASMT – 05 along with security in the form of a bank guarantee for an amount determined under sub-rule (3).
- (5) After payment of tax on provisional basis the proper officer shall issue notice in FORM GST ASMT – 06, calling for further information & records for finalization of assessment under sub-sec (3) of Sec – 60. Once the assessment is finalized the proper officer shall pass order in FORM GST ASMT – 07 determining the final tax payable by the taxpayer.

- (6) Taxpayer can file FORM GST ASMT – 08 towards release of security bond which was furnished under sub rule (4) after the final assessment order is been issued under sub rule (5).
- (7) Proper officer shall ensure that the taxpayer has paid tax as determined in final assessment order as per sub rule (5). Once the tax is paid the proper officer shall release the bond furnished by the taxpayer in FORM GST ASMT – 09 within a period of seven working days from the date of receipt of application from the taxpayer under sub rule (6).

3. **Scrutiny Assessment U/s. 61 :-**

- (1) The returns which are filed by the taxpayer are been assessed by the proper officer U/s. 61. The scrutiny assessment is done on the basis of the information available with the proper officer. If the proper officer finds any kind of discrepancy (based on the return filed by the taxpayer & information available with proper officer) then proper officer shall issue notice to the taxpayer in FORM GST ASMT – 10 informing the taxpayer about the discrepancy & seeking explanation from the taxpayer within such time not exceeding 30 days from the date of service of notice. The period of 30 days can be extended by the proper officer. The notice shall also determine the tax, interest & any other amount payable if the amount is quantifiable.
- (2) The taxpayer can file FORM GST ASMT – 11 providing the explanation towards the notice issued. If the taxpayer accepts the discrepancy mentioned in the notice then taxpayer shall pay the dues & inform the proper officer about the same.
- (3) If the explanation provided by the taxpayer under sub rule (2) is accepted by the proper officer, the proper officer shall inform the taxpayer accordingly in FORM GST AMST – 12.
- (4) If the taxpayer does not respond to the discrepancy notice issued by the proper officer by providing the satisfactory explanations within a period of 30 days or such extended period or fails to take corrective measures even after accepting the discrepancies the proper officer can initiate appropriate action against the tax payer (i.e. Conduct audit of tax payer U/s. 65 or Start Special Audit procedure U/s. 66 or Inspect or Search the place of business of taxpayer U/s. 67 or Initiate demand & recovery procedure or send notices for outstanding demand or shortfall when there is no willful intention of doing fraud U/s. 73 & send notices for outstanding demand or shortfall when there is willful intention of doing fraud U/s. 74)

4. **Best Judgment Assessment U/s. 62 :-**

The proper officer passes Best Judgment Assessment Order if the taxpayer have not furnished the relevant returns U/s. 39 (GSTR – 3B/4) or U/s. 45 (GSTR – 10). Proper Officer will first issue notice U/s. 46 to file the relevant returns to the taxpayer within the period of 15 days. If the taxpayer still does not file the relevant return in lieu of notice served then proper officer based on the information, data & records available will pass the best judgment order in FORM GST ASMT – 13 & upload the summary order electronically in FORM DRC – 07.

5. **Assessment of Unregistered Person U/s. 63 :-**

In this case the person liable to register has not taken registration or fails to take registration or whose registration has been cancelled under sub-sec (2) of Sec -29 but was liable to pay tax, the proper officer may proceed to assess the tax liability based on best judgment for the relevant period. An assessment order can be issued within a period of 5 Years from the date specified for filing of annual return U/s. 44 for the relevant financial year to which tax not paid relates.

The proper officer shall issue notice in FORM GST ASMT - 14 containing the grounds on which assessment is proposed to be made along with summary to be uploaded electronically in FORM GST DRC - 01.

Taxpayer is allowed 15 days time to respond to the notice issued. If no reply is received from the taxpayer the proper officer shall pass final order in FORM GST ASMT - 15 along with summary in FORM GST DRC - 07 which shall be uploaded electronically.

6. Assessment in certain special cases (Summary Assessment) U/s. 64 :-

Based on the evidence the proper shall with prior approval of Additional Commissioner or Joint Commissioner, can proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if the proper officer has sufficient grounds to believe that delay can adversely affect the interest of revenue.

Based on the order passed, the taxpayer can make application within a period of 30 days from the date of receipt of order passed stating the order as erroneous the Additional Commissioner or Joint Commissioner can withdraw the such order and can follow the procedure laid down in Sec - 73 & Sec - 74.

Additional Commissioner or Joint Commissioner on their own motion also can withdraw the such order if it found to be erroneous and can follow the procedure laid down in Sec - 73 & Sec - 74.

II - Demand

Since in GST the tax payable by taxpayer is self assessed so there are chances that tax can either be short paid or not paid or erroneously refunded or input tax credit is wrongly availed or utilised, in that case demand can arise.

1. Determination of Tax Short Paid or Not Paid or erroneously refunded or Input Tax Credit Wrongly Availed or Utilised for any reason other than fraud or any willful-misstatement or suppression of facts U/s.73 :-

- (1) Proper officer shall issue show cause notice U/s. 50 in FORM GST DRC - 01 requiring the taxpayer to provide reason why the tax should not be paid by the taxpayer along with interest payable.
- (2) The proper office shall issue notice under sub-sec (1) of Sec - 50 at least three months prior to the time limit prescribed to the issue of order under sub-sec (10).
- (3) Along with notice the proper officer shall also issue a summary statement electronically in FORM GST DRC - 02 containing the details for tax short paid or not paid or erroneously refunded or input tax credit wrongly availed or utilised for such period.
- (4) The taxpayer based on self assessment can pay all the relevant tax dues along with interest before the issuance of notice & inform the proper officer about such payment made in FORM GST DRC - 03.
- (5) On receipt of application made by taxpayer in FORM GST DRC - 03 the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 04 & the proper officer shall not serve the notice to the taxpayer for the relevant period.
- (6) If the taxpayer pays all the relevant dues along with interest within a period of 30 days based on the receipt of notice, the taxpayer shall inform the proper officer about such payment made in FORM GST DRC - 03.

- (7) If the taxpayer has paid all the tax paid after the issuance of notice but within a period of 30 days the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 05 & further proceeding in respect of the notice shall be deemed to be concluded.
 - (8) If the taxpayer pays all the dues as mentioned in the notice after a period of 30 days the proper officer can impose penalty which will be higher of 10% of tax amount due or Rs. 10,000.
 - (9) The proper officer can issue notice within a period of 3 Years from the due date of furnishing of annual return for the relevant financial year to which the tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised.
2. Determination of Tax Short Paid or Not Paid or erroneously refunded or Input Tax Credit Wrongly Availed or ITC Utilised for any reason other than fraud or any willful-misstatement or suppression of facts U/s. 74 :-
- (1) Proper officer shall issue show cause notice U/s. 50 in FORM GST DRC - 01 requiring the taxpayer to provide reason why the tax should not be paid by the taxpayer along with interest payable.
 - (2) The proper office shall issue notice under sub-sec (1) of Sec - 50 at least six months prior to the time limit prescribed to the issue of order under sub-sec (10).
 - (3) Along with notice the proper officer shall also issue a summary statement electronically in FORM GST DRC - 02 containing the details for tax short paid or not paid or erroneously refunded or input tax credit wrongly availed or utilised for such period.
 - (4) The taxpayer based on self assessment can pay all the relevant tax dues along with interest & penalty equivalent to fifteen percent before the issuance of notice & inform the proper officer about such payment made in FORM GST DRC - 03.
 - (5) On receipt of application made by taxpayer in FORM GST DRC - 03 the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 04 & the proper officer shall not serve the notice to the taxpayer for the relevant period.
 - (6) If the proper officer find that the tax paid by the taxpayer based on self assessment basis is short paid, proper officer can issue demand notice for the balance tax payable along with penalty.
 - (7) If the taxpayer pays all the relevant dues along with interest & penalty equivalent to twenty five percent of tax payable within a period of 30 days based on the receipt of demand notice, the taxpayer shall inform the proper officer about such payment made in FORM GST DRC - 03.
 - (8) If the taxpayer has paid all the tax paid after the issuance of demand notice but within a period of 30 days the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 05 & further proceeding in respect of the notice shall be deemed to be concluded.
 - (9) If the taxpayer pays all the relevant dues along with interest & penalty equivalent to fifty percent of tax payable within a period of 30 days based on the receipt of demand order, the taxpayer shall inform the proper officer about such payment made in FORM GST DRC - 03.
 - (10) The proper officer shall issue order within a period of 5 Years from the due date of furnishing of annual return for the relevant financial year to which the tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised.

3. General Provisions relating to determination of Tax U/s. 75 :-

- (1) If any service or issuance of notice U/s. 73 or U/s. 74 is stayed by an order of appellate authority or appellate tribunal, the period such stay shall be excluded while calculating the period of 3 Years (U/s. 73) or period of 5 Years (U/s. 74) as the case may be.
- (2) If it is concluded by appellate authority or appellate court that the notice issued U/s. 74 is not sustainable, proper office shall determine the tax payable by the taxpayer in accordance with Sec - 73.
- (3) Where any order is required to be issued in pursuance of the direction of appellate authority or appellate tribunal or a court, the proper officer shall issue the order within a period of two years from the date of communication of the said direction.
- (4) If any adverse decision which is contemplated against the taxpayer, a personal hearing opportunity shall be granted if the taxpayer makes a request in writing.
- (5) If sufficient cause is been shown by the taxpayer, proper officer can grant time to taxpayer & adjourn the personal hearing. The maximum of three adjournment can be granted to the taxpayer.
- (6) While passing the order the proper office shall set out all the relevant facts and the basis of his decision.
- (7) The amount of tax, interest & penalty demanded in the order shall not exceed the amount specified in the notice issued and no such demand shall be confirmed which on the grounds which was not mentioned in the notice.
- (8) If appellate authority or appellate tribunal modifies the amount of tax payable determined by the proper officer, the amount of interest & penalty stands modified accordingly based on the amount of tax so modified.
- (9) Taxpayer will be liable to pay interest even if nothing is mentioned in the order passed by the proper officer.
- (10) If no order is passed by the proper officer within the specified period of 3 Years or 5 Years, then it can be concluded that adjudication proceedings are completed and no order can issue thereafter.

