

- Important aspects relating to Notice for
 - "Scrutiny of Returns (Sec. 61)"
 - "Audit by Tax Authorities (Sec. 65)"
- Common errors to avoid and Practical Tips

CA. Deep Koradia

KUTCH SALES TAX BAR ASSOCIATION

Jointly with

BHUJ BRANCH OF WIRC OF ICAI

Assessment V/s Audit

	Section	
ASSESSMENT	59	Self-assessment
	60	Provisional assessment
	61	Scrutiny of returns
	62	Assessment of non-filers of returns [within 5 years]
	63	Assessment of unregistered persons [within 5 years]
	64	Summary assessment in certain special cases [protective assessment]
AUDIT	65	Audit by tax authorities
	66	Special audit

Scrutiny of returns (Sec. 61)

Form	Particulars of the Form	By
ASMT-10	Notice for intimating discrepancies in the return after <u>scrutiny of returns</u> - Quantify Tax, Interest and any other amount, if possible	Officer
ASMT-11	Reply to the notice issued under section 61 - <u>Within 30 Days</u> - Either Accept the demand OR furnish an explanation for the discrepancy [Format]	Tax Payer
ASMT-12	Order of acceptance of reply against the notice issued under section 61	Officer

Scrutiny of returns (Sec. 61)

- Scrutiny of Returns may leads to
 - GSTR2B vs 3B Mismatch [Format]**
 - GSTR1 Vs 3B Mismatch
 - RCM Liability not paid
 - Interest Not paid while filling the returns belatedly
- Pre-adjudication Process
- All GSTR-XX Covered?
- GSTR-9 vis-à-vis GSTR-3B/GSTR-1

Scrutiny of returns (Sec. 61)

- Limited to Mismatch in Returns [and not DMS]
- Not to be invoked to verify the return with other Documents
- Not to be invoked to Call upon other documents to investigate
- Notice before ASMT-10?
- Outcome:
 - Initiate departmental audit as per section 65
 - Initiate Special Audit as per section 66
 - Initiate inspection, search and seizure as per section 67
 - Issue show cause notice u/s 73 & 74 of the CGST Act

Audit by tax authorities (Sec. 65)

- To be conducted by Commissioner or Any officer authorised by him
- By General or Specific Order [Criteria not specified]
- For Such a period
- At such a frequency
- At place of Business / At in the office of officer (Desk Audit)
- Inform at least before 15 working days
- To be completed within 3 months from “Commencement”
- Necessary Facility [Premise/Work area etc] is to be provided to the officer
- To furnish information as required to the officer
- Outcome:
 - On conclusion, findings to be informed to RP within 30 days
 - Issue show cause notice u/s 73 & 74 of the CGST Act

Audit by tax authorities (Sec. 65)

Form	Particulars of the Form	By
ADT-01	Notice for conducting audit	Officer
	Communication of any discrepancies observed	Officer
	Reply to be filled	Tax Payer
ADT-02	Audit Report under section 65(6) [Audit Observations]	Officer

Audit by tax authorities (Sec. 65)

- EA-2000 Audit??
- Not an Inspection / Search
- “Pre-Audit” or “Ledger scrutiny” of client by consultant
- Audit cannot conclude automatically resulting in a demand
- Spot Recovery can’t be insisted upon
- Cant access full computer / Accounting software
- Outcome:
 - On conclusion, findings to be informed to RP within 30 days
 - Issue show cause notice u/s 73 & 74 of the CGST Act

DEMAND AND RECOVERY Section 73 v/s 74

	Section 73	Section 74
To be Invoked	Other than Fraud OR wilful mis-statement OR Supression of Facts	FOR Fraud OR wilful mis-statement OR Supression of Facts
Notice To be issued	Within 33 Months from the due date of Annual Return [3 months prior]	Within 54 Months from the due date of Annual Return [6 months prior]
Statement may be served	For continuing period, Statement can be served instead of Notice	
Reply to SCN		
Passing or Order Max by	Within 3 Years from the due date of Annual Return	Within 5 Years from the due date of Annual Return

DEMAND AND RECOVERY Penal Provisions

If Tax and Interest Paid	Section 73	Section 74
Voluntary Before Service of SCN*	NIL	15%
Within 30 days of Issuing SCN**	NIL	25%
Within 30 days of communicating of Order	NA	50%
After above mentioned period	10% of Tax OR 10000 Whichever is Higher	100%
If self assessed Tax / amount collected as tax no paid within 30 days of due date	10% of Tax OR 10000 Whichever is Higher	NA

DEMAND AND RECOVERY Time barred Limitation

FY	Extended Due Date or Original Date of GSTR9	Section 73		Section 74	
		Notice Can be issued Max by [at least 3M before order]	Order can be issued Max by [3 Years from Due date of G9]	Notice Can be issued Max by [at least 6M before order]	Order can be issued Max by [5 Years from Due date of G9]
2017-18	5-Feb-20	5-Nov-22	5-Feb-23	5-Aug-24	5-Feb-25
2018-19	31-Dec-20	1-Oct-23	31-Dec-23	1-Jul-25	31-Dec-25
2019-20	31-Mar-21	1-Jan-24	31-Mar-24	1-Oct-25	31-Mar-26
2020-21	31-Dec-21	1-Oct-24	31-Dec-24	1-Jul-26	31-Dec-26
*In case Tax has been collected but not paid, No time limit u/s 76					
** In case of erroneous refund, date of 3 / 5 years to be counted from date of Refund Order					

DEMAND AND RECOVERY Forms and Process Flow

Form	Particulars of the Form	By
DRC-01A PartA	Intimation of tax ascertained as being payable under section 73(5)/74(5) [Pre-notice consultations]	Officer
DRC-01A PartB	Reply to the communication for payment before issue of Show Cause Notice	Tax Payer
DRC-01	Show Cause Notice for Tax, Interest and Penalty	Officer
DRC-02	Statement for "Periodical Demand" for Tax, Interest and Penalty	Officer
DRC-03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement	Tax Payer
DRC-04	Acknowledgement of acceptance of payment made voluntarily	Officer
DRC-05	Intimation of conclusion of proceedings	Officer
DRC-06	Reply to the Show Cause Notice	Tax Payer
DRC-07	Summary of Order	Officer

SCN (DRC-01) Or Statement (DRC-02)

- Is it without incomplete investigation? On assumptions?
- Facts – Law – Quantification
- Summary of Amount payable along with DRC-01 / 02
- Ground for DRC-02 MUST be same as DRC-01
- Statement of summary hold as good value as SCN
- Onus on dept to prove any allegation

REPLY TO SCN – DRC-06

- Date of Receipt
- Time limit to reply
- Analysis of Issue with Client and Collection of further Details – COMPLETE FACTS
- Drafting
 - 75% for research 25% for drafting
 - In the Flow
 - Margin, Page numbering, Para numbering, Index if needed, Line spacing, on LH of Noticee, 3 sets properly tagged/stapled, Font, Justify
 - Language
 - Reply to every para – cover every issue – reference to law
 - Be specific, be firm but never hurt the ego
 - Don't use idioms and phrases
 - Annexures
- Accept / Deny Allegation OR Attack Question
- Cross Examination of third party

REPLY TO SCN – DRC-06

- Basis for appeal
- Sequence of Reply to SCN
 - Brief background of the Tax Payer, revenue's case and amount proposed
 - Facts in dispute – Provide the actual fact with evidence
 - Interpretation in dispute – Reply with in detail background of law
 - Address each allegation
 - Alternate plea / submission for issues raised in SCN
 - Mention grounds are separate from each other
 - Prayer to Drop proceedings and to request for PH
- Personal Hearing
 - Compile short-notes / synopsis
 - LoA [Format]
 - Speak softly
 - Start with facts
 - Appearance – Should be presentable

ORDER – (DRC-07)

- Order can't travel beyond the Notice [Grounds as well as Amount]
- Order should mention "Relevant Facts" and "Basis of Decision" separately [Speaking Order]
- Both side's submission is to be recorded

Miscellaneous

- Opportunity of being heard is granted only when request is made in writing
- Max 3 adjournment for OBH
- Adjudicating process is deemed to be completed if order not issued within time
- If anything is self-assessed in return, direct recovery
- If Penalty imposed under 73/74, no other penalty (eg. under 122 / 125)
- If Fraud / Wilful misstatement / Suppression Not found, adjudication proceedings will be automatically converted to Section 73.

Basics of Appeal Under GST

Appeals to Appellate Authority

- Appeal can be filled against "Order" Passed by "adjudicating Authority"
- **Order** is must. RFD-03 or MOV-03/04 is not an Order
- **Adjudicating Authority** Means Any authority to pass the order under the Act, BUT with exclusions
- No Appeals can be filled against:
 - Transfer of proceedings to another officer
 - Seizure of books of accounts
 - Order of prosecution
 - Order of Payment in Instalments
- Appeal can be filled by Commissioner against the order of adjudicating Authority within 6 months
- Can be filled Electronic or Otherwise
- OIO by Assistant Commissioner / Deputy Comm / Superintendent = Appeal to Additional Comm. (Appeals)
- OIO by Additional or Joint Commissioner = Appeal to Commissioner (Appeals)

Appeals to Appellate Authority

- Time Limit – 3 months from the communication of Order
- Condonation – 1 month
- Supreme Court's Suo-moto Judgement For the period 15-03-2020 to 15-07-2021 vis-à-vis Circular 157-13-2021 dated 20-7-2021
- Jurisdiction
- Prepayment:
 - Admitted Amount - Full (Tax, Int, Penalty, fee)
 - Remaining Amount - 10% of Tax [Max 25 crore]
- Deemed Stay
- Adjournments
- Statement of Facts and Ground of appeal
- Quoting judgements
- Plea to shift proceedings from 74 to 73
- Additional Grounds during PH

Appeals to Appellate Authority

Form	Particulars of the Form	By
APL01	Form to file appeal online [Along with Statement of facts and Grounds of appeal] [Appeal to Commissioner (A) or JC (A)]	Tax Payer
	Certified copy of order to be submitted within 7 days [Physically]	Tax Payer
APL02	After submitting <u>PHYSICAL</u> Certified copy of order, Final Ack of Appeal will be given [Indicating Appeal Number] Only after getting APL-02, appeal is said to be filled	Appellate Authority
APL03	Departmental Appeal	Officer appointed by Comm.
APL04	Summary of order clearly mentioning final amount of demand confirmed	Appellate Authority

Thank You