

Chapter XII Assessment

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Statutory Provisions

59. Self-assessment

Every registered taxable person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

Extract of the CGST Rules, 2017

No rules have been specified

Relevant circulars, notifications, clarifications, flyers issued by Government: NA

Related provisions of the Statute

Section or Rule	Description
Section 2(94)	Definition of Registered Person
Section 2(97)	Definition of Return
Section 39	Furnishing of returns
Chapter VIII of the CGST Rules, 2017	Returns

59.1 Introduction

In terms of Section 2(11) of the Act, “assessment” means *determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment*. It is important to note that there is no provision permitting a Proper Officer to re-assess the tax liability of taxable person. As such, reference to such re-assessment in the definition may have to be suitably read down.

It is normally understood that an Assessment is conducted by a proper officer. In terms of

Section 2(91) of the CGST Act, 2017 a “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

The CGST Act contemplates the following types of Assessments:

- Self-assessment (Section 59)
 - Provisional Assessment (Section 60)
 - Scrutiny of returns filed by registered taxable persons (Section 61)
 - Assessment of non-filers of returns (Section 62)
 - Assessment of unregistered persons (Section 63)
 - Summary Assessment in certain special cases (Section 64)
- (i) Self-assessment in terms of Section 59 refers to the assessment made by registered person himself / itself while all other assessments are undertaken by tax authorities.
- (ii) Provisional Assessment under Section 60 is an assessment undertaken at the instance of the registered person. Provisional Assessment is followed by a final Assessment.
- (iii) Scrutiny Assessment under section 61 is a form of re-assessment (since the self-assessment is made by the registered person himself / itself. A scrutiny of returns conducted by the proper officer who checks for the correctness of the returns filed and intimates the registered person of any discrepancies noticed.
- (iv) Assessment of non-filers u/s 62 and Assessment of un-registered person u/s 63 are in the nature of best judgement assessments.
- (v) Summary Assessment under Section 64 is a form of protective assessment based on information gathered from the tax authorities in a particular case.

59.2 Analysis-Self Assessment

Self-assessment means an assessment by the registered person himself and not an assessment conducted or carried out by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence, every registered person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrators, by filing periodic tax returns.

The provisions of the law permit a registered person to rectify any incorrect particulars furnished in the returns. In terms of Section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred(i.e., after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier).

Further, Para 4 of Circular 26/2017 dated 29.12.17, clarifies that in case of summary returns like GSTR-3B, where there are no separate tables for reflecting tax effects of amendments for past periods are available, the figures pertaining to the current month can be adjusted for past month amendments, so long as the amount is not negative. These provisions exhort the concept of self-assessment.

59.3 Comparative Review

The principles of self-assessment were contained in Central Excise Law, Service Tax Law as well as VAT Laws.

Rule 6 of Central Excise Rules, provides that the assessee shall himself assess the duty payable on excisable goods (except in the case of cigarettes). As regards service tax, the concept of self-assessment is envisaged in Section 70 of the Act which provides that every person liable to pay service tax shall himself assess the tax due on services provided by him. State VAT laws also provide for filing of returns and payment of VAT on self-assessment basis [For instance, Section 20 of MVAT Act, 2002 or Section 38 of the Karnataka VAT Act, 2003]

59.4 Related provisions

Section	Rule	Form
Self-Assessment by Regular Assessee and Casual Taxable Person u/s 39(1)	61	Form GSTR 3 & 3B
Self-Assessment by Composition Dealer u/s 39(2)	62	Form GSTR 4
Self-Assessment by Non-Resident Taxable Person u/s 39(5)	63	Form GSTR 5
Self-Assessment of OIDARS provided by person located outside India to non-taxable person in India u/s 39(1)	64	Form GSTR 5A
Self-Assessment by ISD u/s 39(4)	65	Form GSTR 6
Self-Assessment of Tax Deducted At Source u/s 39(3)	66	Form GSTR 7
Self-Assessment of Tax Collected At Source u/s 52(4)	67	Form GSTR 8
Self-Assessment for purpose of Refund by persons having UIN u/s 39(1)	82	Form GSTR 11

59.5 Issues and Concerns

In respect of discharge of any additional tax liability that may arise on account of any re-working or re-computation etc., (for example - Reversal of input tax credit on account of obtaining occupation or completion certificate by a builder in the construction sector), the proportionate input tax credit ought to be reversed (in the above example, in case of unsold flats). The quantum of reversal of taxes relating to the pre-GST regime cannot be reflected in the GST returns, since the credits has been availed under the erstwhile laws (which may or may not have been carried forward as transitional credit). In so far as GST returns are concerned (presently GSTR-3B), the return does not permit / allow a registered person to enter the proportionate reversal of Credit.

59.6 FAQs

Q1. Who is the person responsible to make self-assessment of taxes payable under the Act?

Ans. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

Statutory Provisions**60. Provisional Assessment**

(1) *Subject to the provision of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.*

(2) *The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.*

(3) *The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-Section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.*

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) *The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under subsection (7) of section 39 or the rules made thereunder, at the rate specified under sub-Section (1) of Section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.*

(5) *Where the registered person is entitled to a refund consequent to the order of final assessment under sub-Section (3), subject to the provisions of sub-Section (8) of Section 54, interest shall be paid on such refund as provided in Section 56.*

Extract of the CGST Rules, 2017**98. Provisional Assessment**

- 1) Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
- 2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in FORM GST ASMT – 03, and may appear in person before the said officer if he so desires.
- 3) The proper officer shall issue an order in FORM GST ASMT-04 allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent. of the amount covered under the bond.
- 4) The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):
Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.
Explanation. - For the purposes of this rule, the expression “amount” shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.
- 5) The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.
- 6) The applicant may file an application in FORM GST ASMT- 08 for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).
- 7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT–09 within a period of seven working days from the date of the receipt of the application under sub-rule (6).

Relevant circulars, notifications, clarifications, flyers issued by Government:

1. *Chapter Thirty-One of the compilation of the GST Flyers as issued by the CBEC can be referred to for a gist of the statutory provisions, titled 'Provisional Assessment in GST'.*

Related provisions of the Statute

Section or Rule	Description
Section 2(11)	Definition of assessment
Section 39	Furnishing of returns
Section 50	Interest on delayed payment of tax
Section 54	Refund of Tax
Section 56	Interest on delayed refunds

60.1 Introduction

Provisional assessment can be resorted to in the following situations:

- (i) When a taxable person is unable to determine the Value of goods or services - viz, there is a difficulty in ascertaining:
 - Transaction value to be adopted for determination of tax payable; e.g. open market value to be determined, where consideration is not wholly in money or where supplier enters into cost plus contract with the buyer.
 - Inclusion or exclusion of any amounts in the value of supply; e.g. as per pre existing agreement certain percentage of discount to be allowed to buyer depending upon the buying targets achieved by them.
 - Existence of any circumstance causing failure of transaction value declared e.g. where the supplier is concerned whether the price of the supply can be regarded as the sole consideration for the supply, if the supply has been effected based on a certain promise made by the recipient, for which the monetary value is indeterminable.
- (ii) Rate of tax applicable on the supply cannot be determined by the taxable person, viz there is difficulty in ascertaining:
 - Classification of the goods and / or services under the relevant Schedule;
 - Eligibility to any exemption notification u/s 11 or compliance with conditions associated with such exemption.
 - Applicability of any abatement in rate of tax to the assessee u/s 9 or compliance of conditions associated with such abatement.

60.2 Analysis

The facility of provisional assessment is available only in the cases of Valuation and determination of rate of tax. The provisions of this section cannot be extended for any other purposes or subject matter. For example, there may be uncertainty about the kind of tax (IGST or CGST-SGST) applicable, time of supply, supplies to be treated as “supply of goods” or “supply of services”, [determination of mixed or composite supply is a rate dispute], admissibility of ITC, quantum of reversal of IT, whether a particular action is supply or not. In the aforesaid kind or classes of cases, recourse is not available to provisional assessment.

Procedure

- (i) In terms of Rule 98(1), the process of provisional assessment commences on furnishing of an application by the registered person along with the necessary supporting documents in FORM GST ASMT-01, electronically through the common portal. The provisional assessment cannot be resorted to by the proper officer on a *suo-motu* basis.
- (ii) The proper officer will thereafter issue a notice in FORM GST ASMT-02. As per ASMT-2, reply is required to be given within 15 days to the registered person and if required seek additional information or documents. At this stage the proceedings are deemed to have commenced and the applicant is required to file his objections / make submissions in FORM GST ASMT – 03. The registered person can also appear in person and be heard provided he makes a specific request for a personal hearing.
- (iii) On due consideration of the reply so filed, and after providing a reasonable opportunity of being heard the proper officer must issue an order in FORM GST ASMT-04, by allowing payment of tax on provisional basis, indicating the value or rate or both on the basis of which assessment is allowed on a provisional basis. The proper officer, in the normal course, cannot pass an order rejecting the application of provisional assessment. Since section 60(1) employs the term ‘shall’ pass order ‘allowing’ payment of tax provisionally. The word “shall” in this circumstance cannot be construed as “may”.
- (iv) The order so passed should also indicate the amount for which bond has to be executed in **Form GSMT – 05** by the applicant. The security has to be furnished in the form of bank guarantee not exceeding 25% of the bond ‘amount’ which shall include IGST, CGST, SGST or UTGST and cess (if any) payable in respect of the transaction. A bond furnished to the proper officer under State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of Central Goods and Service Tax Act and the rules made thereunder.

As per ASMT-5, if the bond and security is not provided within the period specified in notice, the provisional assessment shall lapse.

Finalization of provisional assessment

Once the above process is complete the proper officer by issue of a notice in **FORM**

GST ASMT-06, will call for information and records required for finalization of assessment. On conclusion of the due process of hearing, a final assessment order shall be passed by the proper officer in **FORM GST ASMT-07**, specifying the amount payable or refundable to the registered person within a period of 6 months from the date of communication of provisional assessment order. However, on sufficient cause being shown and for reasons to be recorded in writing, this period can be extended by Joint / Additional Commissioner or by the Commissioner for such further period as mentioned below:

Additional / Joint Commissioner	Maximum of 6 months
Commissioner	Maximum of 4 years

It may be noted that, in the statement of outward supply to be furnished by a registered person under section 37(1) i.e. in Form GSTR-1, the invoices in respect of which tax is paid under provisional assessment is required to be mentioned.

Interest liability

If the amount of tax determined to be payable under final assessment order, is more than the tax which is already paid along with the return filed in terms of section 39, the registered person shall be liable to pay interest on the shortfall, at the rates specified in Section 50(1) of the Act[i.e. @18%], from the first day after due date of payment of tax in respect of the said goods and /or services or both, till the date of actual payment, irrespective of whether such shortfall is paid before or after the issuance of order for final assessment¹. Likewise, when the registered person is entitled to refund consequent upon the order for final assessment, interest shall be paid on such refund at the rates specified in proviso to Section 56 @ 9% because refund is arising out of order of adjudicating authority. The interest on refund shall run from 61st date from the date of receipt of application for refund till the date of refund.

As such, the registered person must avail this opportunity of provisional assessment after much thought and careful consideration. Any claim for refund of taxes paid in excess under this section would be processed in accordance with Section 54 (refund provision), and is subject to the concept of "unjust enrichment u/s 54(8) (e). Hence if where the registered person has not borne the incidence of tax and has passed on the burden to some other person, then instead of granting refund to the applicant, it shall be credited to consumer welfare fund. Except for authorizing refund, this section does not by itself permit grant of refund. The application for refund is required to be made within 2 years from the relevant date defined in clause (f) of Explanation 2 to Section 54 i.e. within 2 years from the date of adjustment of tax after the final assessment.

Release of Security consequent to Finalization

On conclusion of the final assessment order the applicant can file an application under Rule

¹ To overcome the decision of Ceat Limited V. CCE, 2015 (317) ELT 192 (Bom), maintained by the Supreme Court in Commissioner V. Ceat Ltd., 2016 (342) ELT A181 (SC)

98(6) in **FORM GST ASMT- 08** for release of security furnished. On receipt of such application, the proper officer ought to release the security furnished, after ensuring that the payment of the amount specified in the final assessment order and issue an order in **FORM GST ASMT-09**. This order has to be issued within a period of 7 working days from the date of receipt of the application for release of security.

60.3 Comparison with equivalent provisions under other laws:

Section 60 of the CGST Act, is broadly drafted on the lines of the erstwhile provisions of Central Excise and Service Tax law. A provisional assessment is permitted under Central Excise Act and also under the Finance Act 1994, and is governed by the procedure contained in Rule 7 of the Central Excise Rules or as the case may be, Rule 6(4)/(4A)/(4B)/(5) of Service Tax Rules. Under both these Acts, provisional assessment is carried out only at the instance of the assessee.

Under the State VAT Acts, the concept of provisional assessment “at the instance of assessee”, is not prevalent. Some State Acts have used his term to cover the cases of best-judgment assessment done by the tax authorities, in the absence of returns or records. For example, refer Section 32 of Gujarat Value Added Tax Act or Section 40 of the Orissa Value Added Tax Act.

60.4 Issues and Concerns

The provisional assessment provides a discretionary power to Joint Commissioner or Additional commissioner and Commissioner to extend the proceedings or pass the order or decree upto 6 months or 4 years. If for any reasons, the time limit stands extended till the 4th year, the registered person shall have to pay interest from the due date of original return filed under Section 39(7) of the CGST Act, 2017, inspite of the taxable person paying tax as per provisional order passed by proper officer.

60.5 FAQs

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be made on a provisional basis only when a proper officer passes an order for permitting the same. For this purpose, the registered person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. The reasons for this purpose may be a case where the registered person is unable to determine the value of goods and/ or services or determine the applicable tax rate, etc. Further, the registered person may also be required to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Q2. What is the latest time by which final assessment is required to be made?

Ans. It is the responsibility of the proper officer to pass the final assessment order after taking into account such information as may be required for finalizing the assessment, within six months from the date of the communication of the order for provisional

assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the timelines may be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding 4 years as he may deem fit.

60.6 MCQs

Q1. Where the tax liability as per the final assessment is higher than tax paid at the time of filing of return u/s 39 the registered person shall_____.

- (a) not be liable to interest, provided he proves that his actions were bonafide
- (b) be liable to pay interest from due date till the date of actual payment
- (c) be liable to pay interest from date of the final assessment till the date of actual payment
- (d) be liable to pay interest from due date till the date of the final assessment

Ans. (b) be liable to pay interest from due date till the date of actual payment

Q2. Provisional assessment under the GST law is permitted to be:

- (a) At the instance of the taxable person
- (b) At the instance of the tax authorities on a best judgment basis in absence of adequate details or response from registered person
- (c) Either of (a) and (b)
- (d) Available only to certain notified persons

Ans. (a) At the instance of the taxable person

Q3. On the grounds of sufficient reasons being provided by proper officer the time period for passing final assessment order can be extended by Joint/ Additional Commissioner for further period of not exceeding

- (a) 2 months
- (b) 4 months
- (c) 6 months
- (d) No time limit.

Ans. (c) 6 months

Q4. On the grounds of sufficient reasons being provided by proper officer the time period for passing final assessment order can be extended by Commissioner for further period of

- (a) 2 months
- (b) 4 years
- (c) 6 months
- (d) No time limit.

Ans. (b) 4 years

Statutory Provisions**61. Scrutiny of Returns**

- (1) *The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.*
- (2) *In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.*
- (3) *In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Section 65 or Section 66 or Section 67, or proceed to determine the tax and other dues under Section 73 or Section 74.*

Extract of the CGST Rules, 2017**99. Scrutiny of returns**

- 1) *Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.*
- 2) *The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the proper officer.*
- 3) *Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.*

Related provisions of the Statute

Section or Rule	Description
Section 2(97)	Definition of Return
Chapter IX of the CGST Act	Returns

Section 65	Audit by tax authorities.
Section 66	Special audit.
Section 67	Power of inspection, search and seizure.
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.

61.1 Introduction

Section 61 deals with the powers vested in the proper officer to scrutinize the returns filed by registered persons with a view to verifying the correctness of the return. In legal parlance, it is considered to be a pre-adjudication process. The process of adjudication is provided in Sections 73 to 75 of the Act.

61.2 Analysis

When a return furnished by a registered person is selected for scrutiny, the proper officer scrutinizes the same with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. The proper officer shall quantify the amount of tax, interest and any other amount payable in relation to such discrepancy, wherever possible.

An explanation shall be furnished by the registered person, in reply to the aforesaid notice, within a maximum period of thirty days from the date of service of the notice or such further period as may be permitted by the proper officer.

The registered person may accept the discrepancy mentioned in the notice issued under Rule 99(1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same OR furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the proper officer.

Where the explanation furnished by the registered person or the information submitted under Rule 99(2) is found to be acceptable, the proper officer shall inform the registered period in FORM GST ASMT-12.

In case, explanation is not furnished OR explanation furnished is not satisfactory, OR after accepting discrepancies, the registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the proper officer, may, take recourse to any of the following provisions:

- Initiate departmental audit as per section 65 of the Act; or
- Initiate Special Audit as per section 66
- Initiate inspection, search and seizure as per section 67 of the Act
- Issue show cause notice u/s 73 & 74 of the CGST Act.

The first stage in return scrutiny denotes a *prima facie* scrutiny, in order to ascertain whether the information furnished by the assessee in returns is prima facie valid and not inadequate or internally inconsistent. The second stage appears to be a detailed assessment calling for records and determination of tax liability under sections 73 to 75.

While doing so, the proper officer, is entitled to exercise the powers vested in him under section 67 of the Act, which deals with power of inspection, search and seizure.

From the language employed in section 67, it appears that, these powers are required to be exercised not in routine manner, but only under circumstances when there is reasonable belief regarding probable suppression or intention to evade tax.

It's important to note that, section 61(3) empathetically provides that, in case the explanation given by the tax payer in response to discrepancies informed by the proper officer, if found acceptable, the registered person shall be informed accordingly in **FORM GST ASMT-12** and no further action shall be taken in this regard.

61.3 Comparative Review

The provisions as to scrutiny of returns were also present in Service Tax / Central Excise and State VAT laws. For example, Rule 12 of Central Excise Rules. Rule 12(3) provided that, the 'Proper Officer' may on the basis of information contained in the return filed by the assessee under rule 12(1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. CBEC has issued guidelines for detailed scrutiny of Central Excise Returns vide Circular No. 1004/11/2015-CX, dated 21-7-2015 and also issued guidelines for detailed scrutiny of service tax returns vide Circular No, 18/4/2015-ST dated 30-06-2015

61.4 Issues and Concerns

During the filing of returns the registered person should ensure that the value of exempted supplies as well as non-taxable supplies, if any, made by him is properly disclosed or else the same may be considered as suppression of information and a notice under section 73 or 74 would stand issued or the proper officer can take recourse for conducting an audit or special audit, as the case may be.

61.5 FAQs

Q1. Describe the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy in the return.

Ans. In case, satisfactory explanation is not obtained or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the Proper Officer may take recourse to any of the following provisions:

- (a) Conduct audit at the place of business of registered person in a manner provided in Section 65 of the Act, or;
- (b) Direct such registered person by notice in writing to provide his records including audited books of account examined and audited by a Chartered Accountant or Cost Accountant under Section 66 of the Act or ;
- (c) Undertake procedures of inspection, search and seizure under Section 67 of the Act; and
- (d) Issue notice under Sections 73 to 75 of the Act.

Q2. What does Section 61 deal with?

Ans. Section 61 deals with scrutiny of returns filed by registered persons to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee u/s 61 is found satisfactory?

Ans. In case the explanation is found acceptable, the registered person shall be informed accordingly in Form GST ASMT-12 and no further action shall be taken in this regard.

61.6 MCQs

Q1. Where the tax authorities notice a discrepancy in the details during the scrutiny of returns, the registered person:

- (a) would be liable for interest if he is unable to prove that the discrepancy did not arise on his account and it was a fault of another person
- (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted
- (c) must prepare documents to cover up the discrepancy.
- (d) Both (a) and (b)

Ans. (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

Q2. If the information obtained from taxable person is not found satisfactory by the proper officer, he can pass assessment order u/s 61 raising demand of disputed tax demand.

- (a) True
- (b) False

Ans. (b) False

Q3. What is the time limit after which action under section 61 cannot be taken?

- (a) 30 days from filing of return or such further period as may be decided by proper officer.
- (b) No time Limit
- (c) Time limit mentioned in Section 73 or 74 of the Act.

Ans. (c) Time limit mentioned in Section 73 or 74 of the Act.

Q.4 What is the time limit, within which the registered person should take corrective measures after accepting the discrepancies communicated to him by proper officer?

- (a) reasonable time
- (b) 30 days from the date of communication of discrepancy.
- (c) 30 days from date of acceptance of the discrepancy
- (d) date of filing of return for the month in which the discrepancy is accepted

Ans. (d) date of filing of return for the month in which the discrepancy is accepted.

Statutory Provisions

62. Assessment of non-filers of returns

- (1) *Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered taxable person fails to furnish the return under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.*
- (2) *Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-Section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for the payment of late fee under section 47 shall continue.*

Extract of the CGST Rules, 2017**100. Assessment in certain cases**

(1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13.

Relevant circulars, notifications, clarifications, flyers issued by Government: NA

Related provisions of the Statute

Section or Rule	Description
Section 2(97)	Definition of Return
Section 2(11)	Definition of Assessment
Section 39	Furnishing of returns.
Section 44	Annual return
Section 45	Final return
Section 47	Levy of late fee.
Section 50	Interest on delayed payment of tax.
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.

62.1 Introduction

This section commences with a *non obstante* clause, meaning whenever the provisions of section 73 or 74 applies, the provisions of section 62 of the Act cannot be invoked. However, the provisions of section 62 can be invoked only in case of registered taxable persons who have failed to file returns, as required, under section 39 or as the case may be, or final return on cancellation of registration under section 45 of the Act. Issuing notice under section 46 appears to be a pre-condition for initiating proceedings under Section 62 of the Act. Section 62 can however not be invoked for non-filing GSTR-1,2 and GSTR-9

62.2 Analysis of Provisions

Non-compliance with the notice issued under Section 46 paves the way for initiating the proceedings under this section. If the assessee fails to furnish the return within 15 days of issue of notice under section 46 then the Proper Officer may assess the tax liability in accordance with the provisions of Rule 100 to the best of his judgment, taking into account all

the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee. However best judgment assessment should be made on the basis of material available or material gathered by proper officer.

The order under section 62 must be issued within a period of five years from the date specified under section 44 for furnishing annual return for the financial year to which the tax not paid relates. Section 44(1) states that date for furnishing the annual return is on or before 31st December following the end of such financial year to which such annual return pertains.

Non-issuance of notice under Section 46 closes the door on invoking Section 62 although other provisions are available to recover the tax dues. If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in Section 2(117) to mean a return filed under Section 39(1) of the Act on which self-assessed tax has been paid in full.

Section 62 starts with the words '*notwithstanding anything contrary to section 73 and 74*'. Section 73 and 74 mandates issue of SCN and providing opportunity of being heard before passing order demanding tax. Further tax can be demanded for a period of five years only, if the existence of omissions and commissions mentioned u/s 74 are proved. The pre-condition of issuing SCN, providing opportunity of being heard for demanding tax for a five-year period in the presence of omissions and commissions listed u/s 74 is sought to be overcome by the non-obstante clause u/s 62. The assessment u/s 62, however can also be made only upto 5 years from the due date of furnishing of annual return u/s 44. Consequence of late fee under Section 47 and interest under Section 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section, even if the assessment order u/s 62 is withdrawn

An order passed under this section shall be communicated to the registered person in **FORM GST ASMT 13**

62.3 Comparison with equivalent provisions in other laws

It appears that section 62 of the CGST Act is incorporated predominantly on the basis of provisions contained in the erstwhile State VAT Acts.

Section 72 of the Finance Act, 1994 provides for assessment of persons liable to pay service tax, but who has failed to furnish return under section 70. However, procedure contained in section 72 requires that every such person shall be given a reasonable opportunity of being heard before the order is passed.

62.4 Issues and Concerns

The consequence of non-filing of returns may lead to adverse GST compliance rating which will have an impact on the matters such as claiming of refund. Registered persons who are

non-filers of returns will always be under the scanner of the authorities for each and every activity carried out by such registered person. Further, it also affects the vendor relationship due to non-compliance of the provisions of the GST laws.

62.5 FAQ's

Q1. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 62?

Ans. The assessment u/s 62 can be initiated only after the service of notice under section 46 i.e. notice to return defaulters.

Q2. If a registered person files a return after receipt of notice u/s 46 but fails to make the payment disclosed by him in the return, can assessment order u/s 62 be passed in this case?

Ans. An assessment order u/s 62 is deemed to have been withdrawn if the registered person furnishes a valid return (including payment of taxes).

62.6 MCQs

Q1. The proper officer can complete assessment under section 62 without issuing any notice to the registered taxable person before passing assessment order.

- (a) True
- (b) False

Ans. (b) False

Q2. What is the time limit for issuing order under section 62?

- (a) 9 months from the end of financial year.
- (b) 3 years for cases covered U/s 73 or 5 years for cases covered under 74
- (c) 5 years for cases covered U/s 73 or 3 years for cases covered under 74
- (d) 5 years from the due date of filing annual return.

Ans. (d) 5 years from the due date of filing annual return

Q3. The assessment order u/s 62 shall be deemed to be cancelled if:

- (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.
- (b) Where the registered person within 90 days of the service of the assessment order.
- (c) Assessment order under section 46 cannot be cancelled.
- (d) Where assessee intimates to the Proper Officer that he has filed the valid return.

Ans. (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.

- Q4. After serving of notice u/s 46, the proper officer is not required to give notice of hearing to the registered tax person before passing assessment order.
- (a) True
- (b) False

Ans. (a) True.

Statutory Provisions

63. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so, or whose registration has been cancelled under sub section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

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

Extract of the CGST Rules, 2017

100. Assessment in certain cases.

- 2) *The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT- 15**.*

Relevant circulars, notifications, clarifications, flyers issued by Government: NA

Related provisions of the Statute

Section or Rule	Description
Section 2(11)	Definition of Assessment
Section 22	Person liable for Registration
Section 24	Compulsory Registration
Section 29	Cancellation of Registration
Section 44	Annual return
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any

	reason other than fraud or any wilful-misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilfull-misstatement or suppression of facts.

63.1 Introduction

This section commences with a *non obstante* clause, meaning whenever the provisions of section 73 or 74 applies, the provisions of section 62 of the Act cannot be invoked. This Section is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers cases where registration was cancelled as under section 29 (2). Section 29(2) of the Act covers 5 instances where registration may be cancelled by proper officer:

- (a) A person who contravenes the provisions of this Act or Rules made thereunder;
- (b) A composition person who fails to furnish returns for 3 consecutive tax periods.
- (c) A person other than composition person who fails to furnish returns for 6 consecutive months.
- (d) A person who has sought voluntary registration but has failed to commence business within 6 months.
- (e) Where registration has been obtained by way of fraud, willful misstatement or suppression of facts.

63.2 Analysis

This Section is applicable to unregistered taxable persons. In such cases, the proper officer is required to provide a reasonable opportunity of being heard to such persons before proceeding to assess such person. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74". It is therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date applicable for filing annual return for the year to which tax not paid relates.

For assessment under this section, notice has to be issued as per Rule 100(2) in **FORM GST ASMT-14** by the proper officer. The notice would contain the reasons / grounds on which the assessment is proposed to be made on best judgment basis. The registered person is allowed a time of 15 days to furnish his reply, if any. After considering the said explanation, the order has to be passed in **FORM GST ASMT- 15**.

63.3 Comparison with equivalent provisions in other laws:

Section 23(4) of the MVAT Act contains similar provision as that in Section 63 of the GST Act.

63.4 Issues and Concerns

The application of the aforesaid section is a discretionary power vested in the officer when it comes to his notice that a person although liable to registered has not obtained registration. The powers vested in the section 63 can be invoked only when the proper officer is in possession of information that is material for initiating the proceedings.

63.5 FAQs

Q1. What is the time limit for passing order u/s 63?

Ans. The proper officer has to pass an assessment order u/s 63 within a period of five years from the due date for filing the annual return for the year to which such tax unpaid relates to.

Q2. Can an assessment order be passed without affording an opportunity of being heard to the person liable to be registered?

Ans. No, an assessment order cannot be passed without giving him an opportunity of being heard.

63.6 MCQs

Q1. What is the time limit for passing order u/s 63?

- (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates.
- (b) 5 years from the end of financial year in which tax not paid relates to
- (c) No time limit

Ans. (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates

Q2. No Notice is required to be given before passing assessment order under section 63?

- (a) True
- (b) False

Ans. (b) False

Q3. Section 63 deals with

- (a) Assessment of taxable persons who have failed to file the returns.
- (b) Assessment of registered taxable person who have filed returns as per the law.
- (c) Assessment of unregistered taxable persons.

- (d) Assessment of any taxable person, whether registered or unregistered.

Ans. (c) Assessment of unregistered taxable persons

Statutory Provisions

64. Summary assessment in certain special cases

- (1) *The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:*

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

- (2) *On any application made by the taxable person within thirty days from the date of receipt of order passed under sub-Section (1) or on his own motion, if the Additional or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or section 74.*

Extract of the CGST Rules, 2017

100. Assessment in certain cases.

- (1) The order of summary assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16.
- (2) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the summary assessment order in FORM GST ASMT-17.
- (3) The order of withdrawal or, as the case may be, rejection of the application under subsection (2) of section 64 shall be issued in FORM GST ASMT-18.

Relevant circulars, notifications, clarifications, flyers issued by Government: NA

Related provisions of the Statute

Section or Rule	Description
Section 73	Determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts

64.1 Introduction

The word “summary assessment” is generally used in a tax legislation to denote ‘fast track assessment’ based on return filed by the assessee. It allows the Tax Officer to make prima facie adjustments based on errors or factors based on the available information without an occasion for calling for further information from an assessee or inspecting his records. In the GST Act, it is used to denote those assessments which are completed ex-parte and on priority basis when there is reason to believe that there will be loss of tax revenue, if such assessment is delayed. This provision is only the first step in invoking the machinery provided to enforce recovery of dues from potential defaulters, and this requires an assessment of the tax liability. Such amounts are commonly known as protective assessments which in a sense protects Government revenue. This section pre-supposes the fact that the proper officer must be in possession of sufficient grounds to believe that any delay will adversely affect revenue.

64.2 Analysis

The summary assessment can be undertaken in case the following conditions are satisfied:

- The Proper Officer must have evidence that there may be a tax liability.
- The Proper Officer has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily. The proper officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue.

Summary assessment under this Section of the CGST Act can therefore be construed in some sense as a ‘protective assessment’ carried out in special circumstances, where there are sufficient grounds to believe that taxable person will fail to make payment of any tax, penalty or interest, if the assessment is not completed immediately. Such failure to pay tax, penalty or interest must be due to reasons attributable to the tax payer (ex: insolvency, instances of defaulting, absconding etc). Hence, summary assessment under this Section is not a substitute for assessment getting time barred. Further, mere possibility of non-payment cannot be a grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. As per the provision of Rule 100(3) the summary assessment order should be in **FORM GST ASMT-16**.

The section allows the person who is assessed and is served the order so passed, to come forward and make an application in accordance with Rule 100(4) in **FORM GST ASMT-17** to the Additional / Joint Commissioner, which will then be examined and if the Additional/ Joint Commissioner is satisfied, the summary assessment order will be withdrawn. As regards the contents of this application, it may be understood that the applicant may attempt to challenge the facts or reasons for the belief about risk of revenue loss and further accept to be available to respond, if proceedings under Section 73/74 were to be undertaken. Besides, the Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in Section 73 or as the case may be Section 74 for determination of taxes not paid or short paid or erroneously refunded, if he considers that such order is erroneous.

From the above, it appears that every summary assessment order so withdrawn under sub-Section (2), may be followed by a notice under Section 73 or as the case may be 74.

On receipt of application the proper officer has to pass the order of withdrawal or, rejection of the application in accordance with Rule 100(5) in **FORM GST ASMT-18**.

Many times, summary assessments are undertaken in circumstances, when a taxable person to whom liability pertains is not ascertainable. In such cases, the law provides that, if the liability pertains to supply of goods, then person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due on completion of summary assessment. There is no deeming provision when unpaid tax liability relates to supply of services.

64.3 Issues and Concerns

The law provides for treating the person in charge of goods as the “taxable person” in cases where the person liable to pay tax cannot be ascertained. This provision will require the transporter to take due care to ensure that his position in terms of compliance with the law will not be compromised, while several transporters may themselves be unaware of the provisions of the law.

64.4 FAQs

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a proper officer on seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax

64.5 MCQs

Q1. What is the time period within which a person can apply to the Additional/ Joint Commissioner for withdrawal of such order under this Section?

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) No time limit.

Ans. (a) 30 days