

STUDY CIRCLE MEETING ON “ISSUES IN GST AUDIT”

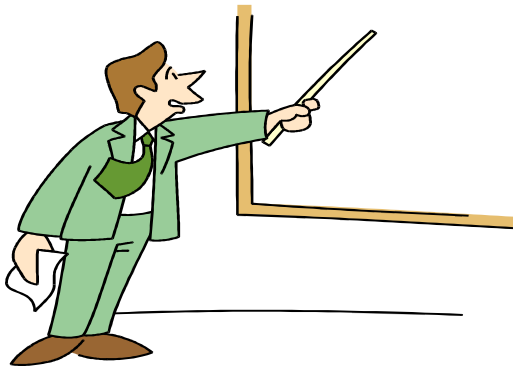
ORGANISED BY

J.B. NAGAR CPE STUDY CIRCLE

on 10th November, 2019

CA RAJIV LUTHIA

“ISSUES IN GST AUDIT”



PRESENTED BY

 **RAJIV LUTHIA**

AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN

AUDIT IN INDIRECT TAXES – Historical Background and Present Regime

LAWS	MANDATORY AUDIT BY PROFESSIONAL	DEPARTMENTAL AUDIT	SPECIAL AUDIT
Service Tax	No	Yes	Yes
Central Excise	No	Yes	Yes
Customs	No	Yes	Yes
VAT / Central Sales Tax	Yes	Yes	No
Octroi	No	No	No
Entertainment Tax	No	No	No
Luxury Tax	No	No	No
Entry Tax	No	No	No
GST	Yes , U/s 35(5) of CGST ACT	Yes , U/s 65 of CGST ACT	Yes , U/s 66 of CGST ACT

- **Whether audit done u/s 35(5) precludes tax authorities to conduct the departmental audit or order special audit?**

Provisions

➤ Section 35(5) of CGST Act, 2017: (Audit)

Every *registered* person whose *turnover* during a *financial year* exceeds the *prescribed limit* shall get his *accounts audited* by a CA or a CWA and *shall submit*

- A copy of audited accounts,
- The reconciliation statement u/s. 44(2) and
- such other documents in such form and manner as may be prescribed

➤ Ingredients of GST Audit

- Audit By CA/CWA
- File copy of Audited Accounts
- Certify & File Reconciliation Statement in Form GSTR 9C

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Forms

Form Number	Particular
Form GSTR 9	Annual Return for Normal Tax payer
Form GSTR 9A	Annual Return for composite dealer
Form GSTR 9C	
Part A	Reconciliation
Part B	Certification

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RELEVANT RULE FOR GST AUDIT

➤ Rule 80(3) of CGST Rule, 2017

Every registered person whose **aggregate turnover** during a financial year **exceeds Rs. 2 crore** shall get his **accounts audited** as specified under section 35(5) and he shall furnish

- a copy of audited annual accounts
- and a reconciliation statement, duly certified, in **FORM GSTR-9C**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

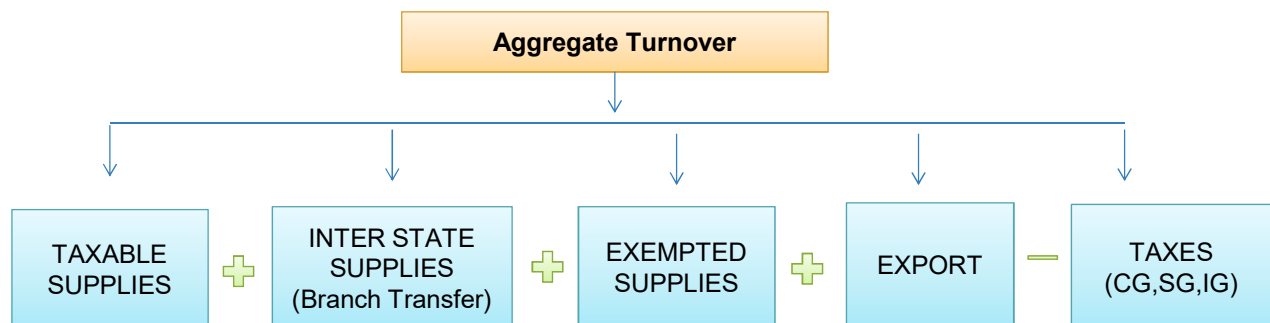
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Provisions

- **Turnover (Section 35(5)) V/s Aggregate Turnover (Rule 80(3)) ?????**
- **Turnover-** Not defined in the Act
- **Aggregate Turnover-** Section 2(6)
“**Aggregate Turnover**” means the aggregate value of all **taxable supplies** (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), **exempt supplies**, **exports** of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis **but excludes** central tax, State tax, Union territory tax, Integrated tax and cess

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Turnover



Aggregate Turnover does not include value of inward supplies on which tax is payable under RCM

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ISSUES 1 - TURNOVER

- ABC Ltd has turnover of Rs. 1.20 Crore from April to June, 2017. The turnover for July to March is 1.30 Crore. Whether he is liable to get audited under GST?
- Turnover has exceed 2 crore in a financial year 2017-18.
- GST introduced in India effective from 1st July, 2017
- Clause (I) of Press release dated 3rd July, 2019 issued by CBIC clarifies that turnover to be calculated for period July, 2017 to March, 2018
- Audit not required in given case.

ISSUES 2 - TURNOVER

- Whether following Income shall form part of Turnover of M/s ABC Ltd

Interest on Bank FDR/ Interest on Loan

Dividend on share

- **Exempted Supply under entry 27 of Notification 12/2017-CT (R)**
- **Whether it is supply of service that of lending in course of business?????....Debatable**
- **Under IT return, Interest is disclosed as "OTHER INCOME"**
- **Explanation to Rule 43 of CGST Rules.....Interest on FDR is not exempt supply for purpose of reversal of ITC u/r 42 & 43**

- **Distribution of Profit....No Supply**

ISSUES 2 – TURNOVER..

- Whether following Income shall form part of Turnover of M/s ABC Ltd

Foreign Exchange Fluctuation

Liability written back

• **Result of recovery of supply.....No Supply**

• **No supply....Result of recovery of bad debt**

Profit on sale of Shares

• **No Supply Since shares are securities which is excluded from definition of goods as well as service.**

ISSUES 2 – TURNOVER..

- Whether following Income shall form part of Turnover of M/s ABC Ltd

Working partner received Remuneration, Interest on capital & share of profit

• **Appropriation of profit**
• **Not to be included for the purpose of turnover**

Issue 3 – Applicability of Audit to branches

REGISTERED PERSON – HINDUSTAN UNILEVER LTD

Located

Gujarat

Maharashtra

Andhra Pradesh

Rajasthan

- | | | | |
|--|---|---|--|
| <ul style="list-style-type: none"> • Selling only Exempted goods • Turnover – 5 Cr | <ul style="list-style-type: none"> • Selling only Taxable Goods • Turnover – 1 Cr | <ul style="list-style-type: none"> • Registered as ISD • Turnover – NIL | <ul style="list-style-type: none"> • Making Export as well as local sales • Turnover – NIL |
|--|---|---|--|

- In which all state will HUL require to get their records audited under GST?

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Issue 3 – Applicability of Audit to branches

- Aggregated turnover 2(6).....means turnover computed on PAN India Basis
- Audit required for Gujarat, Maharashtra & Rajasthan
- Audit of ISD (Andhra Pradesh Branch) - Section 44(1) requires every registered person Except ISD to file annual return.
- 44(2) provides every person require to get accounts audited to furnish annual return
- In our view, ISD not required to get accounts audited

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Issue 4 – Turnover



ABC Construction Ltd sold a piece of Land for Rs. 10 crore during F.Y 2017-18



ABC construction Ltd (Registered Person) has received warehouse rent of Rs. 80 Lakh during F.Y 2017-18 . Therefore P&L account shows receipt of Rs. 10.80 crore.

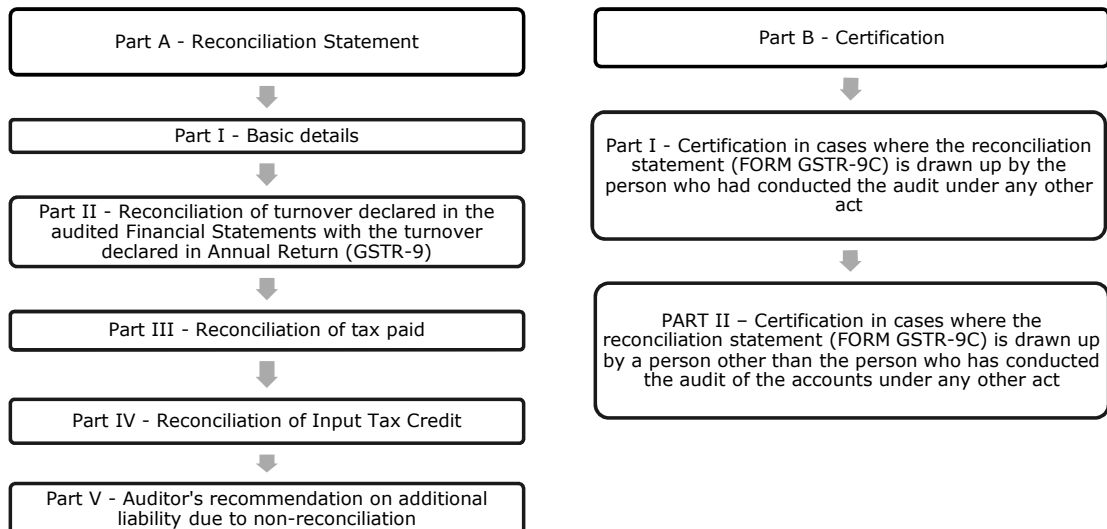
Whether ABC Construction Ltd would require to get his accounts Audited under GST?

ABC Construction Ltd would not require to get its Accounts audited under GST since Sale of Land is covered under Schedule III – Items which are neither supply of goods nor supply of service.

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Audit Report

GSTR 9C - Overview



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- What is scope of GST Audit?
- Is it merely a reconciliation or GST auditor needs to verify & certify the correctness of turnover, taxes, refund claim, ITC etc.

Issue 5

- Form GSTR 9C requires Auditor to reconcile Annual Return with Audited annual accounts of auditee
- Part A – reconciliation is to be signed by Auditor alone , no counter signature of auditee
- Auditor has **to solemnly affirm** that the information given therein is true and correct and nothing is concealed
- Part B- prescribes format of certification to be issued by Auditor and he is required to confirm that particulars given in form GSTR-9C are true and correct.
- Which certification will be required by auditor in following circumstance?

Statutory Auditor/ Tax Auditor	GST Auditor	Certification
Mr. A	Mr. B	II of Part B
Mr. A	Mr. A	I of Part B
Not Applicable	Mr. B	I of Part B

Issue 5

- ICAI has released “Technical Guide” on GST Annual Return and Audit on 16th October,2018
- The views expressed in this Guide are of the authors and ICAI may not necessarily subscribe to the views expressed by the authors
- Internal auditor cannot be the GST auditor of a company
- GST Auditor may have to apply his mind judiciously keeping in view the intent behind the law, principles and policies
- This technical guide is recommendatory and has persuasive value, but not binding on the members of ICAI

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Issue 5

➤ Section 2(13) of CGST Act

Audit means

- the **examination of records, returns and other documents** maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force **to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed,** and **to assess his compliance with the provisions** of this Act or the rules made thereunder

Issue 5

- *There is conflict as to the role of auditor as per the definition of the term "audit" given u/s 2(13) of the Act and scope as laid down in form GSTR-9C i.e.*
 - *Whether role of auditor is only to certify the arithmetical accuracy of reconciliation statement ;*
- OR**
- *Auditor is expected to verify correctness of turnover declared, taxes paid, refund claimed and input tax credit availed etc...*
- *What is intention of the Government ???? Is auditor required to assume the responsibility of ASSESSMENT????*



Issue 5 – Press Release dated 3rd July, 2019

Clause (h).... **Role of chartered accountant or a cost accountant in certifying reconciliation statement:**

There are apprehensions that the CA or CS may go beyond the books of account in their recommendations under FORM GSTR-9C. The GST Act is clear in this regard. With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (FORM GSTR-9) with the audited annual accounts of the taxpayer.

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Issue 6 – Scope of GST Audit

- What is scope of auditor to verify deemed supply transaction such as supply of goods/service without consideration to related person or distinct person.
- E.g. Free samples
- In our view, auditor should verify & identify the transaction of supply covered in schedule 1
- Should apply general audit technique to identify such transaction

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Issue 7 – Scope of GST Audit

- ABC Ltd is operating from office at Dadar, which is their own office.
- There associated concern XYZ Ltd also operate from same office, however no rental/compensation is paid for use of office?
- Whether Auditor should report about “No cross charge” of such transaction?
- Section 15 of CGST deal with value of supply.
- Rule 28 provide that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services.
- It is advisable to disclose this fact in clause 5 of Part B – certification of Form 9C

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Issue 8 – Scope of Auditor

- What is the auditor responsibility with respect to claim of ITC by assessee and amount appearing in GSTR 2A?
- GSTR 2A not in statute.....No provision to reconcile the difference.
- Auditor is not responsible to reconcile the ITC availed by assessee & amount appearing in 2A
- However, CBIC vide notification 49/2019-CT dated 9th October, 2019 has amended Rule 36 to provide that ITC availed by register person in respect of Invoice or debit note, the details of which have not been uploaded by the suppliers under 37(1), shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under 37(1)
- Thus, from 9th October, 2019, government has mandated the assessee to reconcile the ITC availed & GSTR 2A

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Issue 9 – Scope of Auditor

- What amounts are to be disclosed in table 14, column 3 and 4 related to ITC availed
- ITC availed during the year is 20Lakhs. Rs. 4 lacs was reversed on account of exempted turnover. How to disclose in table 14?

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Issue 10 – Scope of Auditor

- In case of difference of opinion regarding value of supply, transaction of supply or ITC etc., should auditor quantify the same & disclose in audit report.
- In our view, Auditor should only state its observation. He is not expected to quantify the same. Auditor is not doing assessment.

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Issue 11 – Observation & Qualification in Certification - Part B

- Clause 2 require registered person to maintained proper books of accounts, records & documents as per statute
- Section 35(1) requires every registered person to maintain true & correct Account of:
 - **Production or manufacture of goods**
 - Inward & outward supply of goods/service
 - **Stock of goods**
 - ITC availed
 - Output Tax paid or payable
 - Other documents as prescribe under Rule 56
 - Details of Goods imported/Exported
 - Supply attracting RCM (Invoice)**
 - Delivery Challan
 - Credit Note/Debit Note
 - Receipt/Payment voucher

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Issue 12 – Observation & Qualification in Certification - Part B

- Whether person is required to verify & upload cash Flow statement as Mention in Part B of GSTR 9C?
- For corporate, if cash Flow is already prepared & forms part of Audit report, same should be uploaded.
- In other case, Not required

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Issue 13 – Observation & Qualification in Certification - Part B

Few Observation

- Verification of payment made to vendor within 180 days from date of Invoice as required in Proviso section 16(2) for ITC reversal
- Generation of Invoice for Inward supply liable for Tax under RCM under Section 9(3) & 9(4) – Section 31(3)(f)

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Issue 14 – Certification - Part B

Para 4 of Part B (II) “In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars given in the said Form No.9C are true and correct subject to the following observations/qualifications, if any”

- Part A – Clause 5 (J) – Credit note accounted for in audited financial statement but are not permissible under GST
- Part A – Clause 5 (F) - Trade discount accounted for audited financial statement but are not permissible under GST
- Tile 14 – Amount of **Eligible** ITC availed

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WITH KNOWLEDGE..... WE KNOW THE WORDS,
BUT WITH EXPERIENCE..... WE KNOW THE MEANING

Thank You!

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